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Supreme Court of the United States

OCTOBER TERM, 1949

No. 445

BROWN SHOE COMPANY, INC., PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 5, 1949.

CERTIORARI GRANTED JANUARY 9, 1950.

United States Court of Appeals

EIGHTH CIRCUIT

No. 13,851

TAX REVIEW

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER,
vs.
BROWN SHOE COMPANY, INC.,
RESPONDENT.

PETITION TO REVIEW DECISION OF THE TAX COURT OF THE UNITED STATES

FILED OCTOBER 27, 1948.

No. 13,852

TAX REVIEW

BROWN SHOE COMPANY, INC.,
PETITIONER,
vs.
COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION TO REVIEW DECISION OF THE TAX COURT OF THE UNITED STATES

FILED NOVEMBER 1, 1948.

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Pleas and proceedings in the United States Court of Appeals for the Eighth Circuit, at the May Term, 1949, of said Court, before the Honorable Archibald K. Gardner, Chief Judge, and the Honorable Joseph W. Woodrough and the Honorable Seth Thomas, Circuit Judges.

Attest:

E. E. KOCH,
Clerk of the United States Court of Appeals for the Eighth Circuit.

(Seal)

Be it Remembered that heretofore, to-wit: on the 27th day of October, A. D. 1948, a record on petition to review decision of The Tax Court of the United States in the case of Commissioner of Internal Revenue, Petitioner, vs. Brown Shoe Company, Inc., Respondent, and on the 1st day of November, A. D. 1948, a record on petition to review decision of The Tax Court of the United States in the case of Brown Shoe Company, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent, were filed in the office of the Clerk of the United States Court of Appeals for the Eighth Circuit.

Printed record on which the petitions to review were heard in said Court of Appeals is in the words and figures following, to-wit:

[fol. 1] Docket Entries.

Brown Shoe Company, Inc., Petitioner,
Docket No. 11394 vs.
Commissioner Of Internal Revenue, Respondent.

Appearances:

For Petitioner: Charles B. McInnis
For Respondent: George E. Gibson

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Jun. 24—Petition received and filed. Taxpayer notified. Fee paid.

Jun. 25—Copy of petition served on General Counsel.

Jul. 30—Answer filed by General Counsel.

Jul. 30—Request for hearing in St. Louis, Mo. filed by General Counsel.

Aug. 2—Notice issued placing proceeding on St. Louis calendar.
Service of answer and request made.

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Feb. 12—Hearing set 3/24/47, St. Louis, Mo.

Mar. 19—Motion for continuance to the next Circuit calendar to be held at St. Louis, Mo. filed, by taxpayer. 3/20/47 Granted.

Aug. 5—Hearing set Sept. 22, 1947, St. Louis, Mo.

Sept. 24—Hearing had before Judge Murdock on merits. Amended Petition and Stipulation of facts filed. Petitioner's Brief due 33 days; respondent's brief 30 days; petitioner's reply 15 days.

Oct. 16—Transcript of hearing 9/24/47 filed.

Oct. 27—Brief filed by taxpayer. 10/28/47 Copy served.

Nov. 26—Brief filed by General Counsel.

Dec. 8—Reply brief filed by taxpayer. 12/9/47 Copy served.

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Feb. 13—Opinion rendered, Judge Murdock. Decision will be entered under Rule 50 2/13/48 Copy served.

Apr. 21—Agreed computation for entry of decision filed.

Apr. 30—Decision entered, Judge Murdock, Div. 3.

Jul. 28—Petition for review by U. S. Court of Appeals, Eighth Circuit, with statement of points filed by General Counsel.

Jul. 28—Notice of petition for review sent to Charles B. McInnis filed. 7/30/48 Proof of service filed.

Jul. 30—Petition for review by U. S. Court of Appeals, Eighth Circuit, and statement of points filed by taxpayer.

Jul. 30—Proof of service filed by taxpayer.

Aug. 3—Proof of service of petition for review from taxpayer filed.

Aug. 19—Joint motion for extension to 10/26/48 to prepare and transmit the record filed.

Aug. 19—Order enlarging time to 10/28/48 to prepare and transmit the record entered.

Oct. 15—Joint praecipe for record filed.

[fol. 2] (Petition Of Brown Shoe Company, Inc.)

(Filed June 24, 1946, The Tax Court of the United States).

The Tax Court Of The United States

Brown Shoe Company, Inc., Petitioner
Docket No. 11394 v.
Commissioner Of Internal Revenue, Respondent

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commis-

sioner of Internal Revenue in his notice of deficiency (symbols IRA:90D:SL), dated May 16, 1946, and as a basis of this proceeding alleges as follows:

I. Petitioner is a corporation duly organized and existing under the laws of the State of New York, with its principal office at 16th and Washington, St. Louis, Missouri. The returns for the fiscal years ended October 31, 1942 and October 31, 1943, the periods herein involved, were filed with the Collector for the First District of Missouri at St. Louis.

II. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to Petitioner on May 16, 1946.

[fol. 3] III. The taxes in controversy are corporation excess profits taxes for the fiscal years ended October 31, 1942 and October 31, 1943, and are in the total amount of $143,983.46.

Assignments Of Error.

IV. The determination of tax set forth in the said deficiency notice is based upon the following errors:

(a) In computing Petitioner's taxable income for the fiscal years ended October 31, 1942 and October 31, 1943, the Commissioner of Internal Revenue erroneously added back to Petitioner's income, as otherwise computed, the amounts of $22,472.60 and $24,307.10, respectively, alleged to represent depreciation on donated properties.

(b) In computing Petitioner's taxable income for the fiscal years ended October 31, 1942 and October 31, 1943, the Commissioner of Internal Revenue erroneously failed to allow accelerated depreciation on Petitioner's depreciable property, which accelerated depreciation was sustained as a result of increased operation of Petitioner's plants, inadequate maintenance, poor quality of maintenance and supplies, untrained and careless employees and the additional wear and tear occasioned by the use of substitute manufacturing materials.

[fol. 4] (c) The Commissioner of Internal Revenue erroneously added to Petitioner's taxable income, as other-

wise computed, for the fiscal year ended October 31, 1943, an amount of $4250.00 representing a refund of floor stock tax received during the said fiscal year which Petitioner elected to have taxed at 1933 rates.

(d) In computing Petitioner's invested capital for the fiscal years ended October 31, 1942 and October 31, 1943, the Commissioner of Internal Revenue erroneously reduced the invested capital, as otherwise computed, by the amount of $971,031.01, alleged to represent capital contributed by various community groups.

Statement Of Facts.

V. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

1. Petitioner corporation is engaged in the business of manufacturing and selling at wholesale men's, women's and children's shoes. Its manufacturing operations are conducted in a number of different plants located in small towns in the States of Missouri, Illinois, Indiana, and Tennessee.

2. During the period 1923 to 1943, Petitioner received from various community groups, such as Chambers of [fol. 5] Commerce and other civic organizations, lump sums in cash as an inducement to establish and operate a shoe factory in the particular town, or to enlarge and operate and existing shoe factory. In a few instances, Petitioner received land or the use of a factory building. However, in the majority of instances, Petitioner merely received lump sums in cash subject to certain clearly defined conditions set forth in a contract entered into between Petitioner and the contributing group.

3. All such contracts contained the specific provision that Petitioner establish and operate a factory in the particular town for a specified term of years, with the provision that if Petitioner should fail to meet either condition then it would be required to return to the contributing group the amount in question.

4. The amounts of such cash contributions were never sufficient to cover the cost of constructing the factory building and place it in condition to operate, and none of

the lump-sum-cash contributions received by Petitioner were ear-marked specifically for the construction or operation of any particular factory. All such cash payments were placed in Petitioner's general cash account and commingled with its other funds. The cost of constructing and operating the particular factory was paid from other funds.

5. The contracts between Petitioner and the contributing group required Petitioner to train and to employ [fol. 6) in its plant in the particular community local citizens of the particular community. Petitioner has found from experience that the cost of training an individual to perform any one of the numerous manufacturing operations required in the manufacture of shoes ranges between $100.00 and $200.00 each.

6. The Commissioner allocated the cash payments received by Petitioner during the period from 1923 to 1943, inclusive, between machinery and buildings, on the assumption that such cash contributions had been used exclusively in the construction and equipment of the factory in the particular community. He then disallowed depreciation on what he considered to be the portion of each factory building and the machinery therein acquired with contributed funds.

7. Petitioner contends that no part of its depreciation should be disallowed for either of the fiscal years ended October 31, 1942 and October 31, 1943, since the cash contributions were not ear-marked for the construction or equipment of a particular factory building, but, on the contrary, were commingled with Petitioner's other funds and used for general corporate purposes.

8. Petitioner contends, in the alternative, that if the cash contributions are to be considered as having been ear-marked for any particular factory, then such funds should likewise be considered as having been ear-marked for the cost of training new employees in the community and for the cost of fully equipping the particular factory [fol. 7] for operation, including the cost of opening inventory.

9. Prior to the fiscal year 1942, Petitioner had agreed with Representatives of the Bureau of Internal Revenue upon composite rates of depreciation which fairly reflect the wear and tear and obsolescence of Petitioner's buildings and machinery and equipment during normal operation.

10. Beginning about November 1, 1941, Petitioner found it necessary to accelerate to a marked extent the hours of operation of its various shoe factories, in order to meet the increased demand for shoes occasioned by the war-time conditions. Much of the increased demand came from military authorities. At the same time, Petitioner began to lose its trained factory and maintenance employees to the Army and to higher paying defense jobs. It was unable to keep up its regular standard of maintenance while, at the same time, being required to use new and poorly trained employees on its machines. Many of the employees realized that their work with Petitioner was of a temporary nature and consequently made no effort to protect Petitioner's buildings, machinery and equipment.. At the same time, Petitioner was unable to obtain sufficient parts and supplies, and in many instances was required to use substitute materials for the maintenance and repair of its machinery and equipment. It was also required to use substitute materials in its manufacturing operations, which occasioned increased wear and tear on its machinery. All of these factors resulted in heavy in- [fol. 8] creased wear and tear of Petitioner's buildings, machinery and equipment during the fiscal years 1942 and 1943.

11. Petitioner's officers assigned its Chief Engineer to make a detailed study of its plants and to submit reports setting forth his findings and opinion as to the extent to which the Company was suffering depreciation not reflected by the composite rates. The Chief Engineer made such a study and submitted to Petitioner's officers and directors separate reports on each of Petitioner's factories describing the conditions which he found, and also submitted a separate report giving the composite rates of depreciation which, in his opinion, the Company sustained during the fiscal years 1942 and 1943 as a result of the

abnormal operating conditions during those years. The report of the Company's Chief Engineer indicated that the Company sustained total composite depreciation at the rates indicated below for the classes of depreciable property indicated:

Buildings	5½%
Building Equipment	8½%
Roofs	12½%
Machinery	12%
Furniture and Fixtures	12%

The Commissioner of Internal Revenue refused to allow any additional depreciation for the fiscal years 1942 and 1943, whereas the Company in fact sustained depreciation at the composite rates indicated above. Petitioner hereby claims total depreciation at the composite rates indicated above.

[fol. 9] 12. During the fiscal year 1943, Petitioner received a refund of floor stock tax in the amount of $4250.00 which it had previously paid and deducted during the calendar year 1933. Under section 128 of the Internal Revenue Code, Petitioner is entitled to have the said amount taxed at 1933 rates instead of 1943 rates. Petitioner elected in its return for the fiscal year 1943 to have the said amount taxed at 1933 rates. The Commissioner of Internal Revenue refused to permit the said amount to be taxed at 1933 rates because Petitioner had appealed to this Court from a determination of its tax liability for that year.

13. In computing Petitioner's invested capital for the fiscal years ended October 31, 1942 and October 31, 1943, the Commissioner of Internal Revenue reduced the invested capital, as otherwise computed, by an amount of $971,031.01, alleged to represent contribution to capital by various community groups. This amount is apparently what the Commissioner considered to be the total of the cash contributions received by Petitioner from various community groups.

14. In computing its invested capital for the fiscal years 1942 and 1943, Petitioner claimed only money or property paid in for its stock under section 718(a)(1) and (2) and

accumulated earnings and profits at the beginning of each taxable year, under section 718(a)(4). It did not claim, and does not claim now, any paid in surplus or contributed capital.

15. The cash sums received by Petitioner from the various community groups during the years prior to 1942 were commingled with Petitioner's other funds and were used for general corporate purposes, including the payment of dividends. Such amounts became part of Petitioner's earnings and profits for the years in which received and were expended for Petitioner's general corporate purposes long before the beginning of Petitioner's fiscal yar 1942.

16. Petitioner claims that its accumulated earnings and profits at the beginning of the respective fiscal years may not be reduced by the amount of $971,031.01 or by any other amount alleged to represent sums which were contributed to and which became unqualifiedly subject to Petitioner's use for its general corporate purposes, prior to the beginning of the fiscal year 1942.

17. Petitioner contends, in the alternative, that if this Court should conclude that the cash contributions previously received by Petitioner may be ear-marked and segregated from Petitioner's accumulated earnings and profits, for invested capital purposes, then such amounts should be applied, first, to the payment of dividends made subsequent to the receipt of such sums, or, alternatively, such sums should be applied to subsequent dividends on a pro rata basis with Petitioner's other accumulated earnings and profits.

[fol. 11] Prayers for Relief

Wherefore, Petitioner prays that this Court may hear the proceeding and determine that no part of Petitioner's depreciation may be disallowed as a result of Petitioner's prior receipt of cash contributions from community groups.

Petitioner further prays, in the alternative, that if the Court should conclude that any part of the Petitioner's depreciation is to be disallowed as a result of its receipt of prior contributions from community groups, then the amount of each contribution should be applied, first, toward

the cost of training new employees in the particular community and the remainder, if any, applied pro rata over the cost of land, buildings, machinery and equipment, and opening inventory and the depreciation adjusted accordingly.

Petitioner further prays that this Court may determine that it is entitled to accelerated depreciation on its buildings, building equipment, roofs, machinery, and furniture and fixtures for the fiscal years 1942 and 1943.

Petitioner further prays that this Court may determine that the amount of $4250.00, received during the fiscal year 1943 as a refund of floor stock tax paid during the year 1933, is subject to tax at 1933 rates, and not at 1943 rates.

[fol. 12] Petitioner further prays that this Court may determine that Petitioner's accumulated earnings and profits may not be reduced by the amount of cash contributions received from community groups during prior years.

Petitioner further prays, in the alternative, that if this Court should determine that Petitioner's accumulated earnings and profits should be adjusted by reason of the receipt of contributions from community groups during prior years, then the Court should determine that such contributions should be applied, first, toward the payment of all dividends subsequent to the date of receipt, or, alternatively, toward the payment of such dividends on a basis pro rata with Petitioner's other accumulated earnings and profits.

Petitioner further prays for such other and further relief that this Court may deem proper on the basis of the facts adduced at the hearing.

Respectfully submitted,

CHARLES B. McINNIS
Transportation Building
Washington, D. C.
Attorney for Petitioner.

Of Counsel:
ROBERTS & McINNIS
Transportation Building
Washington, D. C.

[fol. 13] State of Missouri,
City of St. Louis.—ss:

C. P. Evans being duly sworn, deposes and says that he is secretary of Brown Shoe Company, Inc., the Petitioner named in the foregoing petition, and as such is authorized to verify the said petition; that he has read the foregoing petition and is familiar with the statements contained therein and that the statements contained therein are true to the best of his knowledge, information and belief.

(Seal) C. P. EVANS, Secy.

Subscribed to and sworn to before me this 19th day of June, 1946.

O. HASSELKUSS,
Notary Public.

My commission expires January 6, 1950.

[fol. 14] Exhibit "A"

Treasury Department
Internal Revenue Service

Office of
Internal Revenue Agent
in Charge
St. Louis Division
1767 Railway Exchange Bldg.
IRA:90D:SL

St. Louis, Missouri
May 16, 1946

Brown Shoe Company, Inc.,
1610 Washington Avenue,
St. Louis, Missouri

Gentlemen:

You are advised that the determination of your excess profits tax liability for the taxable years ended October 31, 1942 and October 31, 1943 discloses a deficiency of $143,983.46 and that the determination of your income tax liability for the years mentioned discloses an overassessment of $38,534.88 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, St. Louis, Missouri for the attention of EPB:HS. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By: N. B. Eshleman,
Internal Revenue Agent in
Charge.

Enclosures:
Statement
Form of waiver &
acceptance
Forms 843

[fol. 15] Statement

IRA:90D:SL

Brown Shoe Company, Inc.,
1610 Washington Avenue,
St. Louis, Missouri

Tax Liability for the Taxable Years Ended October 31, 1942 and October 31, 1943

	Income Tax			
Year Ended	Liability	Assessed	Deficiency	Overassessment
10-31-1942	539,921.05	555,350.67		15,429.62
10-31-1943	$ 449,286.28	472,391.54		23,105.26
Totals	$ 989,207.33	1,027,742.21		38,534.88

		Excess Profits Tax	
10-31-1942	$1,002,314.18	944,079.09	58,235.09
10-31-1943	2,331,754.32	2,246,005.95	85,748.37
Totals	3,334,068.50	3,190,085.04	143,983.46

In making this determination of your income and excess profits tax liability, careful consideration has been given to the report of examination dated July 6, 1945; to your protest filed October 22, 1945; and to the statements made at the conference held on December 13, 1945.

The overassessments shown herein will be made the subject of certificates of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 322(a) of the Internal Revenue Code, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessments referred to in this letter, by filing with the collector of internal revenue for your district, claims for refund on Form 843, copies of which are enclosed, the basis of which may be as set forth herein.

A copy of this letter and statement has been mailed to your representative, Mr. Charles B. McInnis, Transportation Building, Washington, D. C., in accordance with the authority contained in the power of attorney executed by you.

[fol. 16]

Adjustments to Net Income
Taxable year ended 10-31-1942

Net income as disclosed by return		$2,845,921.57
Unallowable deductions and additional income:		
(a) Capital expenditures	7,492.27	
(b) Depreciation on donated properties	22,472.60	29,964.87
Total		2,875,886.44
Nontaxable income and additional deductions:		
(c) Capital stock tax		12,305.00
Net income adjusted		$2,863,581.44

Explanation of Adjustments

(a) The deduction for repairs as claimed on your return included $7,882.14 which were capital expenditures and the cost should be recovered through allowance for depreciation with net adjustment as follows:

Capital expenditures disallowed	$ 7,882.14
Less Depreciation allowed	389.87
Net disallowance	$ 7,492.27

(b) The deduction for depreciation as claimed on your return included $22,472.60 for depreciation on donated property or property acquired with donated funds which is held to be an unallowable deduction.

Your contention for allowance of accelerated rates for depreciation has not been substantiated.

(c) On your return you claimed a deduction of $40,820.00 for capital stock tax, whereas the information on file shows the correct amount to be $53,125.00 Income is therefore decreased by $12,305.00.

[fol. 17]

Computation of Tax

Taxable Year Ended 10-31-1942

Income Tax.

Normal Tax and Suftax at 1941 Rates:		
Taxable net income adjusted		$2,863,581.44
Less:		
Declared value excess profits tax	None	
Excess profits tax	837,884.35	
Dividends received credit	187,134.15	1,025,018.50
Net income subject to normal tax and surtax		$1,838,562.94
Normal tax:		
24% of $1,838,562.94		$ 441,255.11
Surtax:		
6% of $ 25,000.00	1,500.00	
7% of 1,813,562.94	126,949.41	$ 128,449.41
Total normal tax and surtax at 1941 rates		$ 569,704.52
Normal Tax and Surtax at 1942 Rates:		
Taxable net income adjusted		$2,863,581.44
Less:		
Declared value excess profits tax	None	
Income subject to excess profits tax	1,473,140.58	
Dividends received credit	187,134.15	$1,660,274.73
Net income subject to normal tax and surtax		$1,203,306.71
Normal tax:		
24% of $1,203,306.71		$ 288,793.61
Surtax:		
16% of $1,203,306.71		$ 192,529.07
Total normal tax and surtax at 1942 rates		$ 481,322.68

[fol. 18] Income tax at 1941 rates—$569,704.52

Allocable portion for period ending 6-30-1942: 242/365 of $569,704.52	$ 377,721.90
Income tax at 1942 rates—$481,322.68	
Allocable portion for period 6-30-42 to 10-31-42: 123/365 of $481,322.68	$ 162,199.15
Correct income tax liability	$ 539,621.05
Income tax assessed: Original, Account No. 410060	$ 555,350.67
Overassessment of income tax	15,429.62

Adjustment to Excess Profits Net Income
Computed under the Invested Capital Method
Taxable Year Ended 10-31-42

Excess profits	
Net income as disclosed by return	$ 2,663,943.35
Unallowable deduction and additional income:	
(a) Normal tax net income	17,659.87
Excess profits net income revised	$ 2,681,603.22

Explanation of Adjustment

(a) Adjustment to normal tax net income made herein result in a net increase of $17,659.87 in excess profits net income.

Adjustments to Invested Capital
Year ended 10-31-1942

Invested capital as disclosed by return		$17,412,367.14
Addition:		
(a) Decrease of reduction on account of inadmissible assets		$ 40,029.52
Total		$17,452,396.66
Deductions:		
(b) Accrued taxes	3,327.88	
(c) Contribution to capital by various community groups	971,031.01	$ 974,358.89
Invested capital adjusted		$16,478,037.77

[fol. 19] Explanation of Adjustments

(a) On your excess profits tax return you reduced average invested capital by $414,547.06 on account of inadmissible assets, whereas the information on file shows the correct amount to be $374,517.54. Invested capital is therefore increased by $40,029.52.

(b) The information on file shows the accrual for taxes was understated by the net amount of $3,327.88 which results in a decrease of invested capital by this amount.

(c) On your excess profits tax return you included in invested capital $971,-031.01 for money or property paid in by various community groups, and it is held that such contributions are not included in invested capital.

Computation of Excess Profits Credit
Based on Invested Capital

Invested capital adjusted		$16,478,037.77
Credit on $5,000,000.00 at 8%		400,000.00
Credit on 11,478,037.77 at 7%		803,462.64
Excess profits credit based on invested capital		$ 1,203,462.64

Computation of Adjusted Excess Profits Net Income
Taxable Year Ended 10-31-1942

Excess profits net income		$ 2,681,603.22
Less:		
Specific exemption	$ 5,000.00	
Excess profits credit	1,203,462.64	1,208,462.64
Adjusted Excess profits net income		1,473,140.58

[fol. 20] Computation of Excess Profits Tax
Taxable Year ended 10-31-1942

Excess Profits tax at 1941 rates:		
Adjusted Excess profits net income		$ 1,473,140.58
Excess profits tax:		
35% of $ 20,000.00		$ 7,000.00
40% of 30,000.00		12,000.00
45% of 50,000.00		22,500.00
50% of 150,000.00		75,000.00
55% of 250,000.00		137,500.00
60% of 973,140.58		583,884.35
Total excess profits tax computed at 1941 rates		$ 837,884.35
Excess Profits Tax at 1942 rates:		
Adjusted Excess profits net income		$ 1,473,140.58
90% of $1,473,140.58	(a)	1,325,826.52
Surtax net income		2,863,581.44
80% of $2,863,581.44		2,290,865.15
Income tax		481,322.68
Excess	(b)	$ 1,809,542.47
Total excess profits tax at 1942 rates lower of (a) or (b)		1,325,826.52

Excess profits tax at 1941 rates—$837,884.35	
Allocable portion for period ending 6-30-1942 242/365 of $837,884.35	555,528.80
Excess profits tax at 1942 rates—$1,325,826.52	
Allocable portion for period 6-30-42 to 10-31-42 123/365 of $1,325,826.52	446,785.38
Correct excess profits tax liability	$ 1,002,314.18
Excess profits tax assessed: Original Account No. 400028	944,079.09
Deficiency of excess profits tax	$ 58,235.09

[fol. 21]

Adjustments to Net Income
Taxable Year Ended 10-31-1943

Net income as disclosed by return		$ 3,066,046.01
Unallowable deductions and additional income:		
(a) Capital expenditures	$ 5,830.71	
(b) Capital stock tax	3,125.00	
(c) Refund of floor stock tax	4,250.00	
(d) Depreciation on donated properties	24,307.10	37,512.81
Net income adjusted		$ 4,003,558.82

Explanation of Adjustments

(a) The deduction for repairs as claimed on your return included $6,958.36 which were capital expenditures and the cost should be recovered through allowance for depreciation with the net adjustment computed as follows:

Capital expenditures disallowed			$ 6,958.36
Less: Depreciation thereon	347.91		
Depreciation on capital expenditures, F.Y. 10-31-42	779.74		$ 1,127.65
Net disallowance			$ 5,830.71

(b) On your return you claimed a deduction of $53,125.00 for capital stock tax, whereas the information on file shows the correct amount to be $50,000.00. Income is therefore increased by $3,125.00.

(c) The information on file shows that on May 26, 1943 you received a refund of $4,250.00 of floor stock tax paid on Aug. 1, 1933 which is held to be taxable income for the year in which received.

(d) The deduction for depreciation as claimed on your return, included $24,307.10 for depreciation on donated property or property acquired with donated funds, which is held to be an unallowable deduction.

Your contention for allowance of accelerated rates for depreciation has not been substantiated.

[fol. 22]

Computation of Tax
Taxable Year Ended 10-31-1943

Income Tax:

Normal Tax and Surtax:

Taxable net income		$ 4,003,558.82
Less:		
Net long term capital gain		$ 14,724.42
Adjusted net income		$ 3,988,834.40
Less:		
Declared value excess profits tax	None	
Income subject to excess profits tax	2,813,060.36	
Dividend received credit	61,761.13	2,874,821.49
Net income subject to normal tax and surtax		$ 1,114,012.91
Normal tax:		
24% of $1,114,012.91		$ 267,363.10
Surtax:		
16% of $1,114,012.91		$ 173,242.07
Total normal tax and surtax		$ 445,605.17
Add:		
25% of $14,724.42, net long term capital gain		3,681.11
Correct income tax liability		449,286.28
Income tax assessed:		
Original, account No. 410039		$ 472,391.54
Overassessment of income tax		23,105.26

Adjustment to Excess Profits Net Income
Computed Under the Invested Capital Method
Taxable Year Ended 10-31-1943

Excess profits net income as disclosed by return	$ 3,908,458.18
Addition:	
(a) Additional income	33,262.81
Excess profits net income revised	3,941,720.99

[fol. 23]

Explanation of Adjustment
Taxable Year Ended 10-31-1943

(a) The adjustments to normal tax net income of $37,512.81 included $4,250.00 for refund of floor stock tax paid in 1933 which was income attribu

table to other year and not included in excess profits net income. The net adjustment is computed as follows:

Normal tax net income increased	$ 37,512.81
Less: Refund of floor stock tax paid in 1933 not subject to excess profits tax	$ 4,250.00
Net increase in excess profits net income	33,262.81

Adjustments to Invested Capital
Taxable year ended 10-31-1943

Invested capital as disclosed by return		$17,261,229.90
Addition:		
(a) Decrease of reduction on account of inadmissible assets		20,862.89
Total		$17,282,092.79
Deductions:		
(b) Reduction of accumulated earnings and profits	83,384.61	
(c) Contributions to capital by various community groups	971,031.01	1,054,415.62
Invested capital adjusted		$16,227,677.17

Explanation of Adjustments

(a) On your excess profits tax return you reduced average invested capital by $341,838.91 on account of inadmissible assets, whereas the information on file shows the correct amount to be $320,976.02. Invested capital is therefore increased by $20,862.89.

(b) The accumulated earnings and profits as disclosed by your excess profits tax return should be reduced by the net amount of $83,384.61 computed as follows:

Capital stock tax accrual	$ 33,750.00
Increase federal income and excess profits tax accrual	41,523.63
Post war credit eliminated	15,603.25
Total	$ 90,876.88
Less: Capital items disallowed for year ended 10-31-1942 less depreciation	7,492.27
Net reduction of invested capital	$ 83,384.61

[fol. 24] (c) On your excess profits tax return you included in invested capital $971,031.01 for money or property paid in by various community groups, and it is held that such contributions are not includible in invested capital.

Computation of Excess Profits Credit
Based on Invested Capital
Taxable Year Ended 10-31-43

Invested capital adjusted		$16,227,577.17
Credit on $5,000,000.00 at 8%		400,000.00
Credit on 5,000,000.00 at 7%		350,000.00
Credit on 6,227,677.17 at 6%		373,660.63
Excess profits credit based on invested capital		$ 1,123,660.63

Computation of Adjusted Excess Profits Net Income
Taxable Year Ended 10-31-43

Excess profits net income		$ 3,941,720.99
Less:		
Specific exemption	$ 5,000.00	
Excess profits credit	1,123,660.63	1,128,660.63
Adjusted Excess profits net income		$ 2,813,060.36

Computation of Excess Profits Tax.
Taxable Year Ended 10-31-43

Adjusted excess profits net income		$ 2,813,060.36
90% of $2,813,060.36	(a)	2,531,754.32
Surtax net income		4,003,558.82
80% of $4,003,558.82		3,202,847.06
Income tax		449,286.28
Excess		$ 2,753,560.78
Excess profits tax liability, lower of (a) or (b)		$ 2,531,754.32
Less:		
Credit for debt retirement		200,000.00
Correct excess profits tax liability		$ 2,331,754.32
Excess profits tax assessed:		
Original, Account No. 400018		$ 2,246,005.95
Deficiency of excess profits tax		$ 85,748.37

[fol. 25] (Answer of Commissioner of Internal Revenue)

(Received and Filed July 30, 1946, The Tax Court of the United States)

The Tax Court of the United States

Brown Shoe Company, Inc., Petitioner,
Docket No. 11394. vs.
Commissioner of Internal Revenue, Respondent.

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein admits and denies as follows:

I. Admits the allegations of paragraph I.

II. Admits the allegations of paragraph II.

III. Admits the allegations of paragraph III.

Assignments of Error.

IV. (a) Denies that the Commissioner erred as alleged in paragraph IV (a).

(b) Denies that the Commissioner erred as alleged in paragraph IV (b).

(c) Denies that the Commissioner erred as alleged in paragraph IV (c).

(d) Denies that the Commissioner erred as alleged in paragraph IV (d).

[fol. 26] Statement of Facts.

V. 1. Admits allegations of paragraph V 1.

2. Admits the allegations of paragraph V 2.

3. Admits the allegations of paragraph V 3.

4. Denies the allegations of paragraph V 4.

5. Denies the allegations of paragraph V 5.

6. Denies the allegations of paragraph V 6.

7. Denies the allegations of paragraph V 7.

8. Denies the allegations of paragraph V 8.

9. Denies the allegations of paragraph V. 9.

10. Denies the allegations of paragraph V 10.

11. Denies the allegations of paragraph V 11.

12. Admits the allegations of the first sentence of paragraph V 12, but denies the remaining allegations of said paragraph.

13. Admits the allegations of the first sentence of paragraph V 13, but denies the remaining allegations of said paragraph.

14. Denies the allegations of paragraph V 14.

15. Denies the allegations of paragraph V 15.

16. Denies the allegations of paragraph V 16.

17. Denies the allegations of paragraph V 17.

VI. Denies generally and specifically each and every allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

[fol. 27] Wherefore, it is prayed that the appeal be denied.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:
Orris Bennett,
Division Counsel.
Felix Atwood,
Special Attorney,
Bureau of Internal Revenue.

FA/meg 7/24/46

[fol. 28] (Motion of Petitioner to amend Petition)

(Filed at Hearing at St. Louis Missouri on September 24, 1947, The Tax Court of the United States)

Comes Now the Petitioner in the above-entitled proceeding by its attorney, Charles B. McInnis, and respectfully

moves that it be permitted to amend its petition in the following particulars:

Page 8, paragraph 14: Delete the last sentence of paragraph 14, which reads as follows: "It did not claim, and does not claim now, any paid in surplus or contributed capital."

Page 10, paragraph 1: Delete the word "cash" on the fourth line, so that the paragraph, as amended, will read as follows:

"Wherefore, Petitioner prays that this Court may hear the proceeding and determine that no part of Petitioner's depreciation may be disallowed as a result of Petitioner's prior receipt of contributions from community groups."

[fol. 29] Page 11, paragraph 1: Delete the word "cash" on the third line, so that the paragraph, as amended, will read as follows:

"Petitioner further prays that this Court may determine that Petitioner's accumulated earnings and profits may not be reduced by the amount of contributions received from community groups during prior years."

Page 11: Add the following paragraph immediately preceding the last paragraph on the page:

"Petitioner further prays in the alternative that if this Court should determine that any portion of the contributions received by Petitioner from community groups during prior years does not constitute a part of Petitioner's accumulated earnings and profits then this Court should determine that said contributions are includible in Petitioner's invested capital as money and property paid in "as a contribution to capital" within the meaning of section 718(a)(1) and (2) of the Internal Revenue Code."

Respectfully submitted,

CHARLES B. McINNIS,
Attorney for Petitioner.

[fol. 30] (Opinion of The Tax Court of the United States)

10 T. C. No. 35.

The Tax Court of The United States

Brown Shoe Company, Inc., Petitioner,
Docket No. 11394. vs.
Commissioner of Internal Revenue, Respondent.

Promulgated February 13, 1948.

Excess Profits Tax—Equity Invested Capital—Accumulated Earnings And Profits—Section 718(a)(4).—Accumulated earnings and profits within the meaning of section 718(a)(4) does not include cash and property transferred to a taxpayer by a community group to induce the petitioner to operate a factory in the community since no profit or income was shown to result from the transfer.

Excess Profits Tax—Equity Invested Capital—Contribution To Capital—Section 718(a)(1)(2).—Such a transaction does not create equity invested capital under section 718(a)(1) or (2). The McKay Products Corporation, 9 T. C. ....., (Dec. 8, 1947), followed.

Deductions — Depreciation—Basis—Donor's—Section 113(a)(2).—Buildings so transferred are not gifts and do not take the donor's basis under section 113(a)(2). The McKay Products Corporation, 9 T. C. ....., (Dec. 8, 1947), followed.

Deductions—Depreciation—Basis.—The taxpayer is entitled to use its cost as basis for depreciation on building built by it with its own funds despite the fact that it had received cash from some community group to induce it to locate and operate a factory in the community.

[fol. 31] Charles B. McInnis, Esq., for petitioner.

George E. Gibson, Esq., for the respondent.

Opinion.

Mudock, Judge: The Commissioner determined deficiences in excess profits tax of $58,235.09 and $85,748.37 for

the fiscal years ended October 31, 1942 and 1943. The issues for decision are whether the Commissioner erred (a) in excluding from equity invested capital $971,031.01, representing money and buildings received from communities in which the petitioner operated factories, and (b) in disallowing depreciation on the buildings thus acquired and on others supposedly built with the funds thus acquired. The facts have been stipulated.

The petitioner, a corporation, filed its returns for the years here in question with the collector of internal revenue for the first district of Missouri. It manufactures shoes in a number of small towns in Missouri, Illinois, Indiana, and Tennessee.

The petitioner, during the period 1919 up to October 31, 1939, received $885,559.45 in cash and $85,471.56 in buildings from various community groups in 12 different towns. There were contracts in all cases except one involving $10,000. Those contracts varied but generally required the petitioner to acquire a factory in the town and to operate it for a specified period of time. The amount involved was to be refunded if the conditions of the contract were not fulfilled. It seems proper to assume that the petitioner fulfilled all conditions attached to the transfers, since neither party suggests contrary.

The Commissioner, in determining the deficiencies, reduced the petitioner's equity invested capital by $971,031.01, representing the cash and the value of the buildings [fol. 32] received, as described above, prior to the first fiscal year involved herein. He stated that it was not includible but gave no further explanation. The petitioner contends that the cash and the stipulated bases of the buildings are a part of equity invested capital, either as a part of its "accumulated earnings and profits" under section 718 (a) (4) or as a "contribution to capital" under section 718 (a) (1) and (2). The petitioner did not realize taxable income as a result of the transfers. Frank Holton & Co., 10 B. T. A. 1317. Congress intended that only earnings or profits could be included in equity invested capital as "accumulated earnings and profits" un-

der subparagraph (4). This is not to say that the earnings or profits would have to represent taxable income, but only that there would have to be earnings or profits. The petitioner has failed to demonstrate that all or any part of the amounts in question represent earnings or profits. Cf. Frank Holton & Co., supra. It has already been held that transfers such as these do not become a part of equity invested capital under section 718 (a) (1) or (2) where, as here, the transferors were not stockholders. The McKay Products Corporation, 9 T. C. ....., (Dec. 8, 1947). Cf. Liberty Mirror Works, 3 T. C. 1018; Frank Holton & Co., supra.

Two buildings were included in the properties transferred to the petitioner, as described under the first issue. Those buildings were used during the taxable years by the petitioner in its business of manufacturing shoes. The cash received by the petitioner was deposited in its general bank account and "was not earmarked for or held intact and applied against the cost of the factory, machinery, equipment or other items applicable to the plant acquired or constructed in the particular community." The Commissioner, in determining the deficiency, disallowed depreciation claimed by the petitioner for each year on the two buildings contributed by citizens of the two com- [fol. 33] munities and he also disallowed "additional amounts which he determined to be the depreciation deducted by Petitioner for the respective taxable years on buildings and machinery acquired with the cash received by Petitioner from the community groups."

It was held in The McKay Products Corporation, supra, that the recipient does not receive a gift and therefore does not take the transferor's basis under section 113(a) (2) on buildings transferred to it as an inducement to locate its business in a particular place. It is held upon authority of that case that the Commissioner did not err in disallowing depreciation on those buildings computed upon the transferor's basis. However, no justification appears for the action of the Commissioner in disallowing depreciation on buildings, machinery and equipment upon the theory that the petitioner used cash received

from the various communities to pay for those buildings and that machinery, and, consequently, the buildings and machinery had, to that extent, no cost to the petitioner. The parties have stipulated that the cash was not earmarked in any way and it is just as reasonable to assume that it was used for any one of a dozen other purposes as it is to make the Commissioner's assumption. The petitioner paid for the buildings and machinery out of its own unrestricted funds, those buildings and that machinery had cost to it, as shown on its books and records, and it is entitled to depeciation thereon.

The parties have settled one issue by the stipulation. The petitioner attempted to raise an issue about the treatment of the recovery of some floor stock tax, but it does not relate to the deficiencies and the Tax Court has no jurisdiction over that matter, as the parties themselves agree in their briefs.

Decision will be entered under Rule 50.

(Seal of The Tax Court of The United States).

[fol. 34] (Order of Redetermination, April 30, 1948.)

The Tax Court Of The United States
Washington

Brown Shoe Company, Inc., Petitioner,
Docket No. 11,394. vs.
Commissioner Of Internal Revenue, Respondent.

Decision.

Pursuant to the Court's opinion promulgated February 13, 1948, the parties herein filed an agreed computation of tax on April 21, 1948. In accordance with said computation, it is

Ordered and Decided: That there are deficiencies in excess profits tax of $52,398.09 and $52,347.92 for the fiscal

years ended October 31, 1942 and October 31, 1943, respectively.

J. E. MURDOCK,
Judge.

Enter: Entered Apr. 30, 1948.

Seal
The Tax Court
of the
United States

[fol. 35] Stipulation of Facts.

(Filed at Hearing at St. Louis, Missouri on September 24, 1947, The Tax Court of the United States.)

The Tax Court Of The United States

Brown Shoe Company, Inc., Petitioner,
Docket No. 11,394. vs.
Commissoner Of Internal Revenue, Respondent.

It is stipulated and agreed, by and between counsel for the respective parties hereto, that the facts hereinafter stated are true and correct and that this stipulation may be offered in evidence in the trial of this cause by either party with the same force and effect as if the same were duly proven by the testimony of witnesses, reserving to each party the right to object on grounds of materiality and relevancy of any fact admitted herein and reserving to each party the right to offer further evidence not inconsistent herewith.

1. Petitioner is a corporation duly organized and existing under the laws of the State of New York, with its principal office at 16th and Washington, St. Louis, Missouri. The returns for the fiscal years ended October 31, 1942 and October 31, 1943, the periods herein involved, were filed with the Collector for the First District of Missouri at St. Louis.

[fol. 36] 2. Petitioner is engaged in the business of manufacturing and selling at wholesale men's, women's and

children's shoes. Its manufacturing operations are conducted in a number of different plants located in small towns in the states of Missouri, Illinois, Indiana, and Tennessee.

3. On December 21, 1914, certain citizens of Dixon, Illinois, paid to Petitioner the sum of $10,000. The said payment was not made the subject of a written contract between Petitioner and the contributing citizens. The only written reference to the said payment of $10,000 is the following excerpt from the minutes of the meeting of Petitioner's Board of Directors held on January 5, 1915:

"The Committee, consisting of the President, Mr. G. W. Brown, and Vice Presidents, A. Theis and J. A. Bush, appointed in the matter of ground and factory buildings at Dixon, Illinois, reported the purchase of same at a cost of Sixty Thousand ($60,000) Dollars and accrued interest, and that title to same is now in the name of Brown Shoe Company, Inc. Also, that the citizens of Dixon had paid us a bonus of Ten Thousand ($10,000) Dollars as a part of our organization expenses in starting the factory there."

4. In addition to the payment of Ten Thousand ($10,000) Dollars referred to in the preceding paragraph, petitioner received during the period from May 1, 1919, to July 31, 1939, cash payments in the aggregate amount of $875,559.45, and buildings having a value of $85,471.56 from community groups in the cities and towns set forth below. The said payments were made pursuant to written contracts between Petitioner and the respective community groups, copies of said contracts being attached hereto as [fol. 37] Exhibits "1-A to 16-P inclusive. The name of the community making the payment, the date of the contract pursuant to which the payment was made, and the amount of the cash and property paid to [P itionery] are set forth below:

Community Making the Contribution	Date of Contract	Amount of Cash And Property Contributed
Charleston, Illinois	4-14-1919	$ 98,000.00
Charleston, Illinois	10-28-1924	25,000.00
Mattoon, Illinois	12-14-1921	11,006.65

Mattoon, Illinois	3- 7-1928	108,552.80	
Union City, Tennessee	11-29-1922	98,000.00	
Salem, Illinois	1- 3-1925	100,000.00	
Salem, Illinois	10-24-1927	25,000.00	
Litchfield, Illinois	5-23-1925	25,000.00	
Vincennes, Indiana	12-15-1925	100,000.00	
Moberly, Missouri	6- 1-1927	74,000.00	
Sullivan, Illinois	10- -1929	100,000.00	
Pittsfield, Illinois	11-20-1933	55,251.93	(Buildings 20,251.93)
Pittsfield, Illinois	11-21-1938	6,000.00	(Cash 41,000.00)
Caruthersville, Missouri	6-15-1934	65,219.63	(All Buildings)
Charleston, Missouri	6-14-1937	60,000.00	
Murphysboro, Illinois	3-22-1939	10,000.00	
Total		$961,031.01	

5. Petitioner received from the citizens of Pittsfield, Illinois, buildings having a value of $20,251.93. The deed to the said buildings, including the land on which the buildings were located, but which was not taken up on Petitioner's books, was delivered to Petitioner on December 1, 1933, and title to said property has been held by Petitioner continuously since that date. The said buildings were used by Petitioner in its business of manufacturing shoes during each of the fiscal years ended October 31, 1942, and October 31, 1943. The balance of the amount indicated in paragraph [fol. 38] 4 as having been received from the citizens of Pittsfield, Illinois, was received in cash.

6. The entire amount indicated in paragraph 4 hereof as an amount received by Petitioner from the citizens of Caruthersville, Missouri, consisted of buildings having a value of $65,219.63. The deed to the said buildings, including the land on which the buildings were located, which land was not taken up on Petitioner's books, was delivered to Petitioner on July 12, 1934, and title has been held by Petitioner continuously since that date. Said buildings were used by Petitioner in its business of manufacturing shoes during each of the fiscal years ended October 31, 1942, and October 31, 1943.

7. The date of receipt by Petitioner Corporation of each cash payment, including the payment from the citizens of Dixon, Illinois, is set forth on Exhibit "17Q" attached hereto.

8. The total amount of cash and value of buildings received by Petitioner from community groups, so far as material to the issues raised in this case, is as follows:

Cash received from citizens of Dixon, Illinois, December 21, 1914, (no contract)	$10,000.00
Cash payment received from the communities pursuant to the contracts referred to in paragraph 4 hereof	875,559.45
Buildings received from the citizens of Pittsfield, Illinois, as indicated in paragraph 5 hereof	20,251.93
Building received from the citizens of Caruthersville, Missouri, pursuant to the contract dated June 15, 1934, as indicated in paragraphs 4 and 6 hereof	65,219.63
Total	$971,031.01

[fol. 39] Petitioner also received from certain of the community groups, as indicated by Exhibits "1-A" to "16-P" inclusive, title to certain land. The said land was not taken up by petitioner on its books and is not included in the above mentioned total, and may be disregarded for the purposes of this proceeding.

9. Certain of the cash payments received by Petitioner from the community groups indicated in paragraphs 3 and 4 hereof, when received by Petitioner, were credited directly to Petitioner's Earned Surplus Account. The other cash payments referred to in paragraph 4 hereof, when received, were credited to Contributed Surplus on the liability side of the Petitioner's ledger and subsequently transferred to Petitioner's Earned Surplus Account. The value of the buildings was set up in a Building Account on the asset side of Petitioner's ledger and thereafter carried as an asset. The cash when received was deposited in Petitioner's general bank account and debited to Cash on the asset side of Petioner's ledger. The cost of constructing the buildings and the additions, machinery, etc., was paid from Petitioner's general bank

account, and debited to Cost of Buildings, Cost of Equipment, or Cost of Machinery, depending upon the nature of the particular expenditure, for the plant in question. The cash received by Petitioner from a particular community group was not earmarked for or held intact and applied against the cost of the factory, machinery, equipment, or other items applicable to the plant acquired or constructed in the particular community. There are at- [fol. 40] tached hereto, as Exhibit "18-R", typical journal entries from Petitioner's books reflecting the receipt by Petitioner of the building from the citizens of Caruthersville, Missouri, and journal entries reflecting the receipt by Petitioner of cash from the citizens of Sullivan, Illinois, together with entries reflecting the construction of Petitioner's new plant at Sullivan, Illinois.

10. Respondent reduced Petitioner's invested capital for each of the fiscal years ended October 31, 1942, and October 31, 1943, by the amount of $971,031.01, representing the cash and the value of the buildings received by Petitioner prior to November 1, 1941. He also disallowed, in computing Petitioner's taxable income, for each of the fiscal years ended October 31, 1942, and October 31, 1943, depreciation claimed by Petitioner on the buildings received from the citizens of Pittsfield, Illinois, and Caruthersville, Missouri, as indicated in paragraphs 5 and 6 hereof. Respondent also disallowed, in computing Petitioner's taxable income for the fiscal years ended October 31, 1942, and October 31, 1943, additional amounts which he determined to be the depreciation deducted by Petitioner for the respective taxable years on buildings and machinery acquired with the cash received by Petitioner from the community groups referred to in paragraph 4 hereof.

11. In every instance the cash received by Petitioner from the community groups, as set forth in paragraphs 3 and 4 hereof, was less than the amount expended by Petitioner for the acquisition or construction of the factory building and the machinery of said factory. In determining the amount of depreciation to be disallowed for the [fol. 41] fiscal years ended October 31, 1942, and October 31, 1943, attributable to the assets acquired with the con-

tributed cash, Respondent first determined the total cost to Petitioner of the factory building, the land, in instances where land was purchased by Petitioner, and the machinery and he then allocated the cash contribution received by Petitioner from the citizens of the particular community to the cost of buildings, land, in instances where land was acquired, and machinery, in the ratio of the total cost of each of said items to the aggregate cost of all of said items for the particular factory. There is attached hereto, marked Exhibit "19-C", a photostatic copy of Exhibit "N" of the revenue agent's report, covering an examination of Petitioner's books and records for the fiscal years ended October 31, 1942, and October 31, 1943.

12. If the Court determines that Petitioner is entitled to depreciation on the buildings received by Petitioner from the citizens of Pittsfield, Illinois, and from the citizens of Caruthersville, Missouri, the basis for computing depreciation on said buildings under Section 113 (b) of the Internal Revenue Code, shall be the amounts set forth in paragraphs 5 and 6 hereof, namely $20,251.93 and $65,-210.63 respectively.

13. If the Court determines that Petitioner is entitled to include in its invested capital, for the taxable years here involved, any amount attributable to the buildings received from the citizens of Pittsfield, Illinois, and Caruthersville, Missouri, the basis of said buildings for inevsted capital purposes shall be the amounts indicated in paragraphs 5 and 6 hereof, namely $20,251.93 and $65,219.63 respectively.

[fol. 42] 14. The Petitioner found it necessary to train new employees for employment in the new or enlarged factories which it established in the communities indicated in paragraphs 3 and 4 hereof. The cost of training such new employees was not less than $100.00 for each new employee. Before the newly established factory, or the addition to a previously established factory, could be operated, it was necessary for Petitioner to supply the factory with an opening inventory of the materials necessary for the manufacture of shoes. The cost of training the new employees and the cost of the opening inventory for each

new or enlarged factory established in said communities was deducted by Petitioner and allowed by Respondent in computing Petitioner's taxable income for the respective taxable years in which incurred. Exhibit "20-T" attached hereto shows the cost of training the new employees and the cost of the opening inventory, together with the cost of the building, cost of machinery, and the cost of land, in instances where land was purchased, for each new or enlarged factory, with respect to which Petitioner received a cash contribution. Respondent does not agree to the method of allocation reflected by said Exhibit, and objects to the matters set forth in the Exhibit and in this paragraph as irrelevant and immaterial.

15. On May 26, 1943, Petitioner recovered from the United States Government floor stock tax in the amount of $4,250.00 which tax it had paid on August 1, 1933, and had deducted in computing its taxable income for the fiscal year ended October 31, 1933. At the time of filing [fol. 43] its income and Excess Profits Tax Returns for the fiscal year ended October 31, 1943, Petitioner filed with the Commissioner a document bearing date of December 13, 1943, which it intended as a compliance with the provisions of Section 128 of the Internal Revenue Code. A photostatic copy of said document is attached hereto, marked Exhibit "21-U".

16. The Commissioner of Internal Revenue determined a deficiency in income tax against Petitioner for its fiscal year ended October 31, 1933. Petitioner appealed to the United States Board of Tax Appeals (Docket 83315.) Under date of January 28, 1938, the United States Board of Tax Appeals entered, pursuant to a written stipulation signed by counsel for the parties to that proceeding, a decision which closed that proceeding.

17. Respondent included the said amount of $4,250.00 in Petitioner's taxable income, subject to the corporation income tax, but not in Petitioner's excess profits net income subject to excess profits tax, for the fiscal year ended October 31, 1943.

18. Petitioner is entitled to depreciation on its machinery at the rate of 8-⅓% instead of the rate of 7% previously determined by Respondent, for each of the fiscal years ended October 31, 1942, and October 31, 1943. The rates of depreciation, determined by Respondent for Petitioner's other classifications of depreciable property, are correct, for each of the taxable years ended October 31, 1942, and October 31, 1943.

CHAS. B. McINNIS
Counsel for Petitioner.

CHARLES OLIPHANT (OB)
Chief Counsel, Bureau of Internal Revenue Counsel for Respondent.

Charleston, Illinois. March 1919.

Brown Shoe Company, Inc.,
St Louis, Missouri.

Gentlemen:

The undersigned citizens of the City of Charleston, Coles County, State of Illinois, in behalf of themselves and other citizens of said city whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business of said City of Charleston, namely:

1st. Within ten days after signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed free and clear of all liens and incumbrances a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

2nd. We will supply the site so selected with the necessary water mains to bring into the premises the city water for use in the factory (or factories) for factory purposes and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

We will connect said premises with the gas mains of the city.

We will connect said premises with electric power wires.

We will construct and complete pavement and sidewalks to the factory buildings and in front of the same, so as to make the factory site accessible from the different points of the compass, and to be completed within sixty days after proposed factory buildings have been erected.

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company, in accordance with the requirements of its business, connecting the factory buildings with Clover Leaf Railroads.

3rd. We agree to pay you or place at your disposal the sum of one hundred thousand ($100,000) dollars in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevators and the necessary machinery, etc., for the manufacture of shoes: said factory building or buildings to be erected upon the site selected.

6th. It is understood between the parties hereto that Brown Shoe Company, Inc., shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit. It is further understood that the main factory building shall be not less than 40 feet X 250 feet, three stories high, and employ four hundred (400) employees when operated to its full capacity, also that the amount paid out for labor shall be not less than one million two hundred fifty thousand ($1,250,000) dollars during the period of the first ten years, provided and adequate supply of labor is obtainable.

It is understood and agreed that the Brown Shoe Company Inc shall construct said building of brick and shall invest in the construction and equipment of said building over and above the one hundred thousand ($100,000) dollars furnished by the citizens of Charleston, not less than one hundred thousand ($100,000) dollars.

It is understood that said Brown Shoe Company, Inc., will carry insurance sufficient in amount to cover the cost of said building or buildings, and in the event of the total or partial destruction of the factory buildings by fire or other casualties the insurance money received by Brown Shoe Company, Inc., shall be employed in the reconstruction or repair thereof without unnecessary delay.

7th. Brown Shoe Company, Inc., shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years; but in the event Brown Shoe Company, Inc., shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Charleston for any cause, Brown Shoe Company, Inc., shall in that event reconvey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interests may appear, the factory site and buildings and equipments and shoe making machinery, free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

8th. We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

Yours truly,

Mr. C. L. Lee,
Charle ton, Ill.

Dear Sir:-

In consideration of the payment to us of $25,000. ($10,000 to be paid on or before December 1st, $10,000 on or before February 1st, $5,000 on or before April 15th.) We agree to proceed at once with the erection of a 100 foot, three story addition to our factory. The same height and width and uniform with present building. In connection with this addition will be a three story stem, to house the necessary coat rooms and toilet facilities. We plan also to build a one story addition, about 15 feet by 39 feet for the factory office, as well as an addition to the present cement house.

These ad itions will require us to install at once a second engine and generator and another boiler.

This will make our plant in Charleston, the largest of our out-of-town factories. We appreciate, as we believe you know, the splendid co-operation and assistance we have had from you and your associates, in your Chamber of Commerce, from the very first day the original factory was talked about, and we look forward with confidence to a bigger and better Charleston factory.

Very cordially yours,

C O N T R A C T

WHEREAS, the Brown Shoe Company of St. Louis, Missouri, and the Mattoon Association of Commerce of Mattoon, Illinois, entered into a contract, under date of June 14th, 1921, which has been fully performed and carried out by both parties to this date, and

WHEREAS, the said Brown Shoe Company is desirous of enlarging and operating on a more extensive scale, its branch factory at Mattoon, Illinois, and said Association of Commerce is willing and desirous of having this done by the said Brown Shoe Company, and negotiations have been pending between the parties for some time, and

WHEREAS, J. O. Reynolds, of Mattoon, Illinois, is this day accordingly entering into a lease with the said Brown Shoe Company for the premises owned by him on Sixteenth Street in Mattoon, Illinois, in a portion of which the present factory of the said Company has been and is being operated under said contract, dated June 14, 1921, and the new lease includes also the entire second floor of the two-story brick building owned by said J. O. Reynolds at said location, and that part of the

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS AND AGREEMENTS OF THE PARTIES HERETO, IT IS HEREBY AGREED BY AND BETWEEN THE SAID Association of Commerce, party of the first part, and said Brown Shoe Company, party of the second part, as follows:

FIRST: In consideration of the said Brown Shoe Company enlarging and operating on a more extensive scale, as hereinafter provided, its factory for a period of six years in said demised premises from February 1st, 1922, and for an additional five years in case Lessee exercises its option, said first party will furnish free so far as second party is concerned, or pay the general personal property tax of said party of the second part in said period assessed by the local Assessor, and will also furnish free, so far as second party is concerned, or pay for the water for the lavatory and toilet purposes used by said party of the second part, in the operation of its said factory, and will also pay to said Brown Shoe Company the sum of ONE THOUSAND EIGHT HUNDRED and THIRTY-SIX and 66/100 DOLLARS($1836.66) annually, beginning with February 1st, 1923, each

of other similar industries, employing female labor in Mattoon, Illinois so long as said second party shall employ all such available labor, or shall be unable in the exercise of due diligence to obtain such labor.

THIRD: Said second party agrees that it will enlarge and operate on a more extensive scale its said factory so as to occupy the whole of said demised premises in said new lease, so entered into with said J. C. Reynolds, and that it will accordingly employ at all times, at least, Two Hundred and Fifty employees and from that number up to Three Hundred and fifty employees during such period provided, however, that during the first Three Months from February 1st, 1922, it shall not be required to employ more than One Hundred and Seventy-five employees which force shall be gradually increased, so that at the end of such first Three Months period, at least Two Hundred and fifty employees as aforesaid, shall be then regularly employed at all times, strikes, acts of Providence and conditions beyond its control excepted.

FOURTH: The contract entered into under date of June 14, 1921 is to be cancelled and superseded by this contract, provided, however, that it shall not be considered cancelled and

locating of the factory buildings to be erected by you.

2nd. We will supply the site so selected with the necessary water mains to bring into the premises the city water for use in the factory (or factories) for factory purposes and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

We will connect said premises with the gas mains of the city.

We will connect said premises with electric power wires.

We will construct and complete pavement and sidewalks to the factory buildings and in front of the same, so as to make the factory site accessible from the different points of the compass, and to be completed within sixty days after proposed factory buildings have been erected.

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company, in accordance with the requirements of its business, connecting the factory buildings with Clover Leaf Railroads.

3rd. We agree to pay you or place at your disposal the sum of one hundred thousand ($100,000) dollars in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevators and the necessary machinery, etc., for the manufacture of shoes: said factory building or buildings to be erected upon the site selected.

4th. We agree to have all taxes and license fees, including water, property coming to the City of Charleston rebated by said City for a period of ten years.

5th. Upon the acceptance of this proposition and when the site has been selected and the deed to the property has been delivered to Brown Shoe Company, Inc., and the one hundred thousand ($100,000) dollars have been secured so that the sum shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon, Brown Shoe Company, Inc., shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated provided said payments shall not be called for until a certificate of the architect or person in charge of construction shall certify that materials or labor has been furnished of value equal to such payments asked for, and it shall have the same completed at the earliest practicable time: it being understood that ten thousand ($10,000) dollars of the said one hundred thousand ($100,000) dollars shall be paid to Brown Shoe Company, Inc., when the contract or contracts for the buildings is or are signed by the contractors and the Company, and the remaining ninety thousand ($90,000) dollars shall be paid in installments of ten thousand ($10,000) dollars, as requested by Brown Shoe Company, Inc., to make payments for said buildings and the equipment thereof. It is further agreed that the total sum of one hundred thousand ($100,000) dollars shall be available for the purpose of making final payments for the factory and the equipment thereof within one hundred and twenty (120) days from the date of this contract.

EXHIBIT 1-A
SHEET 1

event of the total or partial destruction of the factory buildings by fire or other casualties the insurance money received by Brown Shoe Company, Inc., shall be employed in the reconstruction or repair thereof without unnecessary delay.

7th. Brown Shoe Company, Inc., shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years; but in the event Brown Shoe Company, Inc., shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Charleston for any cause, Brown Shoe Company, Inc., shall in that event convey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interests may appear, the factory site and buildings and equipments and shoe making machinery, free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

8th. We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

9th. We will furnish you rent free, for temporary use until the factory building is ready for occupancy, a room to be used for educating girls in stitching uppers, you to pay for cost of power, we to pay for bringing wiring to said room or building.

Charleston Merchants Association

C.L. Lee, President.

H. C. Welch, Secretary

IN DUPLICATE.

Brown Shoe Company, Inc., hereby accepts the foregoing proposition and agrees to be bound by the terms thereof.

April 14-1919

BROWN SHOE COMPANY, Inc.

Vice-President.

ATTEST: Secretary

EXHIBIT 1-A
SHEET 2

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EXHIBIT 4-D

on or before February 1st, we [illegible] April 15th.) We agree to proceed at once with the erection of a 100 foot, three story addition to our factory. The same height and width and uniform with present building. In connection with this addition will be a three story stem, to house the necessary coat rooms and toilet facilities. We plan also to build a one story addition, about 15 feet by 39 feet for the factory office, as well as an addition to the present cement house.

These additions will require us to install at once a second engine and generator and another boiler.

This will make our plant in Charleston, the largest of our out-of-town factories. We appreciate, as we believe you know, the splendid co-operation and assistance we have had from you and your associates, in your Chamber of Commerce, from the very first day the original factory was talked about, and we look forward with confidence to a bigger and better Charleston factory.

Very cordially yours,

BROWN SHOE COMPANY,

By E. M. Faulkner

October 27-1924

KRMc-a

The above conditions are hereby accepted and will be fulfilled by the Chamber of Commerce and the people of Charleston and which pledge I am ready to guarantee

Reduction

C. A. Lee

factory at Mattoon, Illinois, and said Association of Commerce is willing and desirous of having this done by the said Brown Shoe Company, and negotiations have been pending between the parties for some time, and

WHEREAS, J. O. Reynolds, of Mattoon, Illinois, is this day accordingly entering into a lease with the said Brown Shoe Company for the premises owned by him on Sixteenth Street in Mattoon, Illinois, in a portion of which the present factory of the said Company has been and is being operated under said contract, dated June 14, 1921, and the new lease includes also the entire second floor of the two-story brick building owned by said J. O. Reynolds at said location, and that part of the ground-floor room of said building, which has been occupied by the Central Illinois Public Service Company, said new lease being for a term of six years from February 1st, 1922 with an option to said lessee of five years more, the entering into of which lease is a condition precedent to the entering into of this contract between said Association of Commerce and the said Brown Shoe Company, and

WHEREAS, said Brown Shoe Company and said J. O. Reynolds and said Association of Commerce are familiar with the terms and provisions of said lease, so being entered into this day, and said Brown Shoe Company and said Association of Commerce are, therefore, ready, and willing to enter into this contract

14-a

enlarging and operating on a more extensive scale, as hereinafter provided, its factory for a period of six years in said demised premises from February 1st, 1922, and for an additional five years in case Lessee exercises its option, said first party will furnish free so far as second party is concerned, or pay the general personal property tax of said party of the second part in said period assessed by the local Assessor, and will also furnish free, so far as second party is concerned, or pay for the water for the lavatory and toilet purposes used by said party of the second part, in the operation of its said factory, and will also pay to said Brown Shoe Company the sum of ONE THOUSAND EIGHT HUNDRED and THIRTY-SIX and 66/100 DOLLARS($1836.66) annually, beginning with February 1st, 1923, such sums to be paid in instalments, as follows, to-wit:

Annual payments on the First day of February of each succeeding year during the term of six years and not applying to the five year option, such payments are to be made only in the event the Brown Shoe Company shall operate said enlarged plant continuously and employ at least Two Hundred Fifty employees at all times, and should they fail to do so then said payments are to cease for such time as they fail to operate such enlarged plant.

SECOND; Said first party also agrees to furnish cooperation towards securing female labor for said second party in the operation of its said factory, and will not solicit or encourage the location

number up to Three Hundred and fifty employees during such period provided, however, that during the first Three Months from February 1st, 1922, it shall not be required to employ more than One Hundred and Seventy-five employees which force shall be gradually increased, so that at the end of said first Three Months period, at least Two Hundred and fifty employees as aforesaid, shall be then regularly employed at all times, strikes, acts of Providence and conditions beyond its control excepted.

FOURTH: The contract entered into under date of June 14, 1921 is to be cancelled and superseded by this contract, provided, however, that it shall not be considered cancelled and superseded until the present factor, shall have been enlarged and operated on a more extensive scale, as hereinbefore set forth in paragraph THREE.

IN WITNESS WHEREOF, said Brown Shoe Company and the said Mattoon Association of Commerce have, by their duly authorized officers, in this behalf, set their hands and seals this 14th day of December, A. D. 1921, IN DUPLICATE.

Mattoon Association of Commerce (SEAL)

By Thos F Wright (SEAL)
Its President

ATTEST:
L. T. Hancock
Secretary

Brown Shoe Co. (SEAL)

By Harry L. Towne (SEAL)
Its Vice President.

ATTEST:
H. C. Baldwin
Acting Secretary.

We hereby certify that there has been deposited in our Bank, the sum of Ten Thousand DOLLARS to meet the payments to the Brown Shoe Company, provided by the foregoing contract.

CENTRAL ILLINOIS TRUST AND SAVINGS BANK
MATTOON, ILLINOIS.

By W. J. Osborne
President.

ATTEST:
H. O. Packard
Cashier.

We hereby certify that there has been deposited in our Bank, the sum of Twenty-five hundred DOLLARS to meet the payments to the Brown Shoe Company, provided by the foregoing contract.

STATE TRUST AND SAVINGS BANK
MATTOON, ILLINOIS.

By Frank D. Mason
President.

ATTEST:

secured so that the sum shall be available to pay the cost of the factory buildings and the equipment thereof as the work progresses thereon, BROWN SHOE COMPANY, INC. shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated, provided said payments shall not be called for until a certificate of the architect or person in charge of construction shall certify that materials or labor has been furnished of value equal to such payments asked for, and it shall have the same completed in the earliest practicable time; it being understood that TEN THOUSAND DOLLARS ($ 10,000.00) of the said ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00) shall be paid to BROWN SHOE COMPANY, INC. when the contract or contracts for the building is or are signed by the contractors and the Company, and the remaining NINETY THOUSAND DOLLARS ($ 90,000.00) shall be paid in installments of TEN THOUSAND DOLLARS ($ 10,000.00), as requested by BROWN SHOE COMPANY, INC., to make payments for said buildings and the equipment thereof. It is further agreed that the total sum of ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00) shall be available for the purpose of making final payments for the factory and the equipment thereof within NINETY (90) days from the date of this contract.

SEVENTH: It is understood between the parties hereto, that BROWN SHOE COMPANY, INC. shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit. It is further understood that the main factory building shall be not less than forty (40) feet by Two hundred and fifty (250) feet, three stories high. Also, that the amount paid out for labor shall be not less than ONE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($ 1,250,000.00) during the period of the first ten (10) years, provided an adequate supply of labor is obtainable.

It is understood that said Brown Shoe Company, Inc., will carry insurance sufficient in amount to cover the cost of said building or buildings, and in the event of the total or partial destruction of the factory buildings by

EXHIBIT 4-D
SHEET 2

fire or other casualties, the insurance money received by BROWN SHOE COMPANY, INC. shall be employed in the reconstruction or repair thereof without unnecessary delay.

EIGHTH: BROWN SHOE COMPANY, INC., shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business, for at least a period of TEN (10) years, but in the event BROWN SHOE COMPANY, INC. shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Matteon for any cause, BROWN SHOE COMPANY, INC. shall in that event reconvey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interest may appear, the factory site and building free of all incumbrances.

But, it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which BROWN SHOE COMPANY, INC. has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only as long as necessary.

NINTH: We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

TENTH: We agree to arrange with the owner of the building you are now occupying for an extension of your present lease until the new factory building is completed and ready to move into, you agree to pay rental at the present rate.

EXHIBIT "5-E"
SHEET 1

THIS AGREEMENT MADE AND ENTERED INTO by and between the Chamber of Commerce of Union City, Tennessee, party of the first part, and the Brown Shoe Company of St. Louis, Missouri, Party of the second part, WITNESSETH:-

In consideration of the mutual promises and obligations of each party made to the other said parties have this day entered into the following agreement:-

First:-- The party of the first part agree and obligate themselves to make, execute and deliver within ten days from the date of this contract a warranty deed conveying to the party of the second part free and clear of all liens and encumbrances the following described property, situated in the town of Union City, 13th Civil District of Obion County, Tennessee, bounded and described as follows:-

> Bounded on the North by Chesthan Street; on the West by First Street; on the South by Gibbs Street; and on the East by the Mobile & Ohio Railroad Company's right of way, being the entire tract of land situated between said streets and said railroad property, and now belonging to R. L. Whipple.

Party of the First Part further agree that they will within 60 days after the erection of the factory building as hereinafter provided, construct and complete pavement and sidewalk along the

March 7, 19 8.

Brown Shoe Company,
Saint Louis,
Missouri.

Gentlemen:

The undersigned citizens of the City of Mattoon, Coles County, State of Illinois, in behalf of themselves and other citizens of said city whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said City of Mattoon, namely:

FIRST: Within ten days after the signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed, free and clear of all liens and incumbrances, a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

etc., for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

FOURTH: We agree to pay all City, County and State taxes for a period of ten (10) years from the opening of the factory.

FIFTH: We agree to furnish free of charge to you, the necessary water for all purposes for a period of ten (10) years from the opening of the factory.

SIXTH: Upon the acceptance of this proposition and when the site has been selected and the deed to the property has been delivered to BROWN SHOE COMPANY, INC., and the ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00) have been secured so that the sum shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon, BROWN SHOE COMPANY, INC. shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated, provided said payments shall not be called for until a certificate of the architect or person in charge of construction shall certify that materials or labor has been furnished of value equal to such payments asked for, and it shall have

Cashier.

We hereby certify that there has been deposited in our Bank, the sum of Twenty five hundred DOLLARS to meet the payments to the Brown Shoe Company, provided by the foregoing contract.

STATE TRUST AND SAVINGS BANK
MATTOON, ILLINOIS.

By Frank J Mooney
President.

ATTEST:

J B Crane
Cashier.

We hereby certify that there has been deposited in our Bank, the sum of Fifty five hundred DOLLARS to meet the payments to the Brown Shoe Company, provided by the foregoing contract.

THE NATIONAL BANK OF MATTOON,
MATTOON, ILLINOIS.

By Frank Crane
President

ATTEST: E W Vallmer
Cashier.

7-a

FIRST: Within ten days after the signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed, free and clear of all liens and incumbrances, a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

SECOND: We will supply the site so selected with the necessary water mains of both systems to bring into the premises the necessary water for use in the factory for factory purposes, for adequate fire protection including sprinkler system and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

We will connect said premises with the gas mains of the City.

We will connect said premises with electric power and light wires.

We will construct and complete pavement and sidewalks to the factory buildings and in front of the same, so as to make the factory site accessible from the different points of the compass, to be completed by the time the proposed factory buildings are erected.

We will construct and complete switch and sidetracks, suitable to BROWN SHOE COMPANY, in accordance with the requirements of its business, connecting the factory buildings with the Illinois Central Railroad.

THIRD: We agree to pay you or place at your disposal the sum of ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00) in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof, including a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevator and the necessary machinery,

EXHIBIT 4-D
SHEET 1

present lease until the new factory building is completed and ready to move into, you agree to pay rental at the present rate.

BROWN SHOE COMPANY, INC., hereby accepts the foregoing proposition and agrees to be bound by the terms thereof.

BROWN SHOE COMPANY, INC.

BY _____

Vice President.

ATTEST:

_____

Secretary.

EXHIBIT 4-D
SHEET 3

themselves to make, execute and deliver within ten days from the date of this contract a warranty deed conveying to the party of the second part free and clear of all liens and encumbrances the following described property, situated in the town of Union City, 13th Civil District of Obion County, Tennessee, bounded and described as follows:-

Bounded on the North by Chesthan Street; on the West by First Street; on the South by Gibbon Street; and on the East by the Mobile & Ohio Railroad Company's right of way, being the entire tract of land situated between said streets and said railroad property, and now belonging to R. L. Whipple.

Party of the First Part further agree that they will within 60 days after the erection of the factory building as hereinafter provided, construct and complete a pavement and sidewalk along the entire length of the west side of said tract of land from Gibbon Street to Chesthan Street, and also along the entire width of said tract along the South side thereof on Gibbon Street. Party of the First Part further binds itself to connect said tract of land with an adequate sewerage system, disposing of said sewerage in a sanitary, healthful and practical manner and so as not to endanger the health of the employees of said factory or those living in the locality of said tract of land, and said Party of the First Part further binds itself to connect said tract of land with a six inch water main of the Union City Water Works System, or with two four inch water mains of said system, in the event a six inch water main is not available.

11-a

SECOND:-- Party of the first part further agree and obligate themselves to supply the foregoing described site or town lot with the necessary water mains and connect said premises with the sewerage and electric wires owned and operated by the town of Union City, and they further agree to construct and complete concrete sidewalks to the front of the factory building hereinafter provided for, so as to make the factory site and building accessible from the different points of the compass, and to be completed within sixty days after the erection of the factory building as hereinafter provided, and the party of the first part further binds and obligates itself to the party of the second part to construct and complete switch and side tracks suitable to the Brown Shoe Company and necessary in the operation of said factory connecting same with the Mobile & Ohio Railroad.

THIRD:-- The party of the first part further binds and obligates itself to place at the disposal of the party of the second part in the manner hereinafter provided the sum of One Hundred Thousand Dollars ($100,000.00), which amount the party of the

FIFTH:-- The Party of the Second Part bind and obligate themselves, when the deed to the real estate hereinbefore described has been delivered to Party of the Second Part, and the One Hundred Thousand Dollars ($100,000.00) is available to it for said factory building and equipment, to proceed without delay to construct and complete the necessary factory building and to equip the same as herein contemplated, provided said payments on said one hundred thousand dollars shall not be called for until a certificate of labor and material has been furnished Party of the First part showing an amount of labor equal to the payments asked for, and said buildings shall be completed by the Party of the Second Part at the earliest practicable time; it being further understood that Ten Thousand Dollars of the said One Hundred Thousand Dollars shall be paid by Party of the First Part to the Party of the Second Part when the contract or contracts for the buildings is or are signed by the contractors and said Party of the Second Part, and the remaining ninety thousand dollars shall be paid by the Party of the First Part in installments of ten thousand dollars as requested by the Brown Shoe Company, to make payments of said buildings and the equipment thereof, it being agreed and understood that the total sum of one hundred thousand dollars shall be available and payable by party of the

-4-

during the period of the first ten years of the operation of said factory, provided an adequate supply of labor is obtainable.

Party of the Second Part farther binds and obligates itself to carry insurance on said factory building and equipment in sufficient amount to cover the cost of the same, and in the event of the total or partial destruction of the factory building or equipment by fire or other casualties the insurance money received by the Brown Shoe Company shall be employed in the reconstruction or repair thereof without unnecessary delay.

SEVENTH:-- The party of the Second Part farther binds and obligates itself to operate said plant continuously as long as it is practicable in the conduct of its business for at least a period of ten years; but in the event party of the Second Part shall within said period of ten years elect to discontinue, or fail to continue the manufacture of shoes in said factory building in Union City for any cause, or shall otherwise in any manner fail to fully comply with the obligations herein assumed by the party of the Second Part, said party of the Second Part shall in such event reconvey to the party of the First Part to be held in trust by them for the citizens contributing to the bonus fund for the establish-

It is distinctly understood and agreed by the parties hereto that a shut-down in the operation of the factory herein contemplated rendered necessary either by fire, war or other casualties, or by causes over which party of the second part has no control, such as parties, epidemics or trade or labor conditions shall not be considered a discontinuance of said plant, but such shut-down shall continue only so long as necessary, and the period covered by such shut-down on account of any of the above causes shall not be considered in computing the ten year period for the operation of said plant as hereinabove provided.

EIGHTH:-- Party of the First Part hereby pledges to Party of the Second Part its loyal support and the support of the business men and citizens of Union City, Tennessee, in making the factory a success, and agrees with the Party of the Second Part to co-operate with it in any manner possible in the carrying out of said successful conduct of said factory.

NINTH:-- Party of the First Part binds and obligates itself to furnish to the Party of the Second Part rent free, for temporary use until the factory is ready for occupancy, a room to be used for educating girls in stitching uppers, party of the Second Part to pay for the cost of power and the Party of the First Part to pay for bringing the wiring to said room or building.

Salem, Illinois, January 3, 1925.

Brown Shoe Company, Inc.,
St. Louis, Missouri.

Gentlemen:

The undersigned citizens of the City of Salem, Marion County, State of Illinois in behalf of themselves and other citizens of said city whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said City of Salem, namely:

1st. Within ten days after signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed free and clear of all liens and incumbrances, a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

2nd. We will supply the site so selected with the necessary water mains to bring into the premises the city water for use in the factory or factories for factory purposes and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

We will connect said premises with electric power wires.

We will construct and complete pavement and sidewalks to the factory buildings and in front of same, so as to make the factory site accessible from the different points of the compass, (to be completed within sixty days after proposed factory buildings have been erected.)

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company in accordance with the requirements of its business, connecting the factory buildings with the adjacent steam railroad.

3rd. We agree to pay you or place at your disposal, the sum of one hundred thousand($100,000) dollars in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevators and the necessary machinery, etc., for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

the total or partial destruction of the factory buildings by fire or other casualties, the insurance money received by Brown Shoe Company, Inc., shall be employed in the reconstruction or repair thereof without unnecessary delay.

7th. Brown Shoe Company, Inc., shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years: but in the event Brown Shoe Company, Inc., shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Salem, for any cause, Brown Shoe Company, Inc., shall in that event reconvey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interests may appear, the factory site and buildings free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war, or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as epmics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

8th. We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

9th. We will furnish you rent free, as soon as you are ready for it, for temporary use until the factory building is ready for occupancy, a room to be used for educating girls in stitching uppers, you to pay for cost of power, we to pay for bringing wiring to said room or building.

provided suitable buildings can be procured,

C L McMacken W B Roberts Salem Chamber of Commerce
C W Virgell C P Ratzburg By John Clinton President
Chas E Houck O A Sawtelle John L Kaye
John C Martin Chas Meyers Frank Schmeltzly
W E McAuton W B Pendleton Fred Anderson
Alex D Mellis W O Jenkins Secy. Arthur J. Morrell. Ed Bauman Jansen

so as to make the factory site and building accessible from the different points of the compass, and to be completed within sixty days after the erection of the factory building as hereinafter provided, and the party of the first part further binds and obligates itself to the party of the second part to construct and complete switch and side tracks suitable to the Brown Shoe Company and necessary in the operation of said factory connecting same with the Mobile & Ohio Railroad.

THIRD:--The party of the first part further binds and obligates itself to place at the disposal of the party of the second part in the manner hereinafter provided the sum of One Hundred Thousand Dollars ($100,000.00), which amount the party of the second part obligates itself to use for the payment of the construction of a suitable factory building or buildings and the equipment thereof, including power and lighting plants, fire extinguisher system, fire escapes, wiring, heating, plumbing and elevators, said factory building to be located upon the lot of land hereinabove described, and to be of the dimensions and construction as hereinafter provided.

FOURTH;--The party of the first part further binds and obligates itself, and each and every member of the Chamber of Commerce of Union City, to use its influence and its best efforts in having all city taxes and city license fees, including water coming to the Corporation of Union City, remitted by said Corporation of Union City for a period of ten years.

of about equal to the payments above set, said buildings shall be completed by the Party of the Second Part at the earliest practicable time; it being further understood that Ten Thousand Dollars of the said One Hundred Thousand Dollars shall be paid by Party of the First Part to the Party of the Second Part when the contract or contracts for the buildings is or are signed by the contractors and said Party of the Second Part, and the remaining ninety thousand dollars shall be paid by the Party of the First Part in installments of ten thousand dollars as requested by the Brown Shoe Company, to make payments of said buildings and the equipment thereof, it being agreed and understood that the total sum of one hundred thousand dollars shall be available and payable by party of the First Part to Party of the Second Part for the purpose of making final payments for the factory and equipment thereof within one hundred and twenty (120) days from the date of this contract.

SIXTH:-- Party of the Second Part further binds and obligates itself to continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit, and Party of the Second Part further agree that the main factory building shall be not less than forty-five (45) feet wide by two hundred and fifty (250) feet in length, built of brick, three stories high and shall employ six (600) hundred employees when operated to its full capacity, and party of the Second Part further binds and obligates itself that it shall pay out for labor not less than one million, two hundred and fifty thousand dollars

repair thereof without unnecessary delay.

SEVENTH:-- The party of the second part further binds and obligates itself to operate said plant continuously as long as it is practicable in the conduct of its business for at least a period of ten years; but in the event party of the second part shall within said period of ten years elect to discontinue, or fail to continue the manufacture of shoes in said factory building in Union City for any cause, or shall otherwise in any manner fail to fully comply with the obligations herein assumed by the party of the second part, said party of the second part shall in such event reconvey to the party of the first part to be held in trust by them for the citizens contributing to the bonus fund for the establishment of said plant, as their interest may appear, the factory site and building and equipment, except shoe-making machinery, free of all encumbrances, and the party of the second part further agree that in order to guarantee to the party of the first part that the above provision will be carried out they will have attached to each policy of insurance covering the factory building and equipment, either fire, tornado, boiler explosion or any other policy covering the real estate and equipment, a loss payable clause to the Chamber of Commerce of Union City as its interest might appear.

EIGHTH:-- Party of the First Part hereby pledges to Party of the Second Part its loyal support and the support of the business men and citizens of Union City, Tennessee, in making the factory a success, and agrees with the Party of the Second Part to co-operate with it in any manner possible in the carrying out of said successful conduct of said factory.

NINTH:-- Party of the First Part binds and obligates itself to furnish to the party of the Second Part rent free, for temporary use until the factory is ready for occupandy, a room to be used for educating girls in stitching uppers, party of the Second Part to pay for the cost of power and the Party of the First Part to pay for bringing the wiring to said room or building.

WITNESS OUR SIGNATURES, this November 29th, 1922.

Chamber of Commerce of Union City,

By _____
President,

By _____
Secretary,

By _____
Treasurer

Approved:

_____ _____

_____ _____

_____ _____

Board of Directors Chamber of Commerce of Union City.

Brown Shoe Company

By _____

We will construct and complete pavement and sidewalks to the factory buildings and in front of same, so as to make the factory site accessible from the different points of the compass, (to be completed within sixty days after proposed factory buildings have been erected.)

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company in accordance with the requirements of its business, connecting the factory buildings with the adjacent steam railroad.

3rd. We agree to pay you or place at your disposal, the sum of one hundred thousand($100,000) dollars in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevators and the necessary machinery, etc., for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

4th. We agree to have all taxes and license fees, including water, properly coming to the City of Salem rebated by said City for a period of ten years.

5th. Upon the acceptance of this proposition, and when the site has been selected and the deed to the property has been delivered to Brown Shoe Company, Inc., and the one hundred thousand ($100,000) dollars have been secured so that the sum shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon, Brown Shoe Company, Inc., shall proceed without delay to construct and complete the necessary factory buildings [redacted] to equi the same as herein contemplated, and it shall have the same completed in the earliest practicable time; it being understood that ten thousand($10,000) dollars of the said one hundred thousand ($100,000) dollars shall be paid to Brown Shoe Company, Inc., when the contract or contracts for the buildings is or are signed by the contractors and the Company, and the remaining ninety thousand ($90,000) dollars shall be paid in installments of ten t ousand($10,000) dollars, as requested by Brown Shoe Company, Inc., to make payments for said buildings and the equipment thereof. It is further agreed that the total sum of one hundred thousand ($100,000) dollars shall be available for the purpose of making final payments for the factory and the equipment thereof within [redacted] from the date of this contract.
(Final payment to be made in no event until six months building is completed)

6th. It is understood between the parties hereto that Brown Shoe Company, Inc., shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit. It is further understood that the main factory building shall be not less than 40 feet X 250 feet, three stories high, and that the amount paid our for labor shall be not less than one million two hundred fifty thousand ($1,250,000) dollars during the period of the first ten years, provided a suitable supply of labor is obtainable.

It is understood that said Brown Shoe Company, Inc., will carry insurance sufficient in amount to cover the cost of said building or buildings, and in the event of

and steam not less than 60' x 80' three stories high

EXHIBIT 6-F
SHEET 1

temporary use until the factory building is ready for occupancy, a room to be used for educating girls in stitching uppers, you to pay for cost of power, we to pay for bringing wiring to said room or building.

C L McMackin — W B Roberts — Salem Chamber of Commerce
C W Durrell — C P Ratzburg — By John Clouston President
Chas E Hurll — O A Daniels — John L Rogers
John Clouston — Chas Meyers — Frank Schwartz
W E M artin — W B Purdue — J J Martin
Alex D Mennix — H O Jenkins — Allen Andrews
F C Cameron — Arelius J Morrell — E H Baumgarten
L F Killough — Swasey Bro & Co — E B Riddle M D
W H Berman — J M Gaskin — H C Moore
A C Stewart — H Erickson — J L Smith & Son
W O C Liddy — H A Sommer — J B Stonecipher
F Safford — Ray Mynard — Fred Leitfield
Herbert Kaufman — Chas A Galt — C O Long
John L Kragt — Frank C Kenney — Assistant
IN DUPLICATE — C R Lamont

Brown Shoe Company, Inc., hereby accepts the foregoing proposition and agrees to be bound by the terms thereof.

BROWN SHOE COMPANY, Inc.

E R Carter

Vice President.

ATTEST: H E Wittich

Secretary.

EXHIBIT 6-F
SHEET 2

67

EXHIBIT "7-G"

3

OFFICE: 119A W. MAIN

TELEPHONE 61

SALEM CHAMBER OF COMMERCE

SALEM, ILLINOIS

OFFICERS

C. A. PORTER, President
W. O. RODDY, Vice-President
F. B. STORMENT, Treasurer
JOHN L. KAGY, Secretary

DIRECTORS

F. B. YOUNG — F. B. STORMENT
O. J. McMACKIN — B. E. MARTIN
BENJ. M. SMITH — C. A. PORTER
JOHN C. MARTIN — F. A. DIETRICH
W. O. RODDY

SALEM

Population, 4,500

Municipal Light and Water Plants

78 Miles from St. Louis and 284 Miles from Chicago, in the Heart of the Dairy, Poultry and Fruit Growing District

Railroads—
C. & E. I. R. R.
B. & O. S. W. R. R.
M. & I. R. R.

On Midland Trail and Other Main Auto Roads

Served by Several Auto Bus and Truck Freight Lines

Fine Residential Districts

Two Active Building and Loan Associations

One Public Park

Fine Country Club With 9-Hole Golf Course

Two Movie Theatres

Four Grade Schools—One High School with Large Gym

Salem, Illinois, October 20, 1927

E. H. McCarthy Vice President,
Brown Shoe Company,
St. Louis, Mo.

Dear Sir:

Answering your telegram of the 19th, the Salem Chamber of Commerce is now ready to enter into a contract with you along the lines discussed when in your office recently, with reference to the construction of an addition 40 x 100 feet, three stories high, on the west end of your present building here.

We have made a canvass of our business people and have the $25,000.00 asked fully subscribed.

At a meeting of the directors of our association this afternoon, I was authorized to offer you $25,000.00 for the erection of such addition, on the following terms:

$10,000.00	payable as the work progresses
5,000.00	May 1st, 1928
5,000.00	Nov. 1st, 1928
5,000.00	May 1st, 1929

EXHIBIT "8-H"
SHEET 1

(99-a)

9

"THE STORE THAT CLOTHES AND FEEDS THE WHOLE FAMILY"

L. W. CLINE & CO.

WEST SIDE SQUARE, 415-417 NORTH STATE STREET

LITCHFIELD, ILL. May 23rd 1925

Mr. E. R. McCarthy, Vice President,
Brown Shoe Company, Inc.,
St. Louis, Missouri.

Dear Mr. McCarthy:

It gives me much pleasure to report that the campaign put on by our Chamber of Commerce to raise a fund of $ 25,000 as an inducement to your Company to build an addition to your Litchfield Plant, has been a complete success.

We therefore tender to you this sum, in consideration of a cancellation of the clauses in the old contract providing for a switch from the Big Four Railroad and for paving the street on the south side of your Plant, and further, in consideration of the erection of a new addition, 90 feet by 39 feet, 4 stories high, which, we understand, will increase your capacity approximately thirty per cent, and will mean an increase in the annual pay roll of the plant of around $150,000.

"THE STORE THAT CLOTHES AND FEEDS THE WHOLE FAMILY"

L. W. CLINE & CO.

WEST SIDE SQUARE, 415-417 NORTH STATE STREET

LITCHFIELD, ILL. 192

We therefore feel that this proviso should be incorporated in the new contract, that is, for the remaining part of the ten year period.

Yours very truly,

L. W. Cline

COMMITTEE CHAIRMAN.

4

Vincennes, Indiana, December , 1925.

Brown Shoe Company, Inc.,
St. Louis, Missouri.

Gentlemen:-

The undersigned citizens of the City of Vincennes, Knox County, State of Indiana, in behalf of themselves and other citizens of said city whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said City of Vincennes, namely:

1st. Within ten days after signing of this agreement, we will furnish to you and within ninety days will deed to you absolutely by a good warranty deed free and clear of all liens and incumbrances a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

2nd. We will supply the site so selected with the necessary water mains to bring into the premises the city water for use in the factory for factory purposes and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

We will connect said premises with the gas mains of the city.

We will connect said premises with electric power wires.

We will construct and complete pavement and sidewalks to the factory buildings and in front of the same, so as to make the factory site accessible from the different points of the compass, and to be completed within sixty days after proposed factory buildings have been erected.

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company, in accordance with the requirements of its business, connecting the

We will connect said premises with electric power wires.

We will construct and complete pavement and sidewalks to the factory buildings and in front of the same, so as to make the factory site accessible from the different points of the compass, and to be completed within sixty days after proposed factory buildings have been erected.

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company, in accordance with the requirements of its business, connecting the factory buildings with B. & O. Railroads.

3rd. We agree to pay you or place at your disposal the sum of one hundred thousand ($100,000) dollars in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevators and the necessary machinery, etc., for the manufacture of shoes: said factory building or buildings to be erected upon the site selected.

4th. We agree to have all taxes and license fees, including water, properly coming to the City of Vincennes rebated by said City for a period of ten years.

5th. Upon the acceptance of this proposition and when the site has been selected and the deed to the property has been delivered to Brown Shoe Company, Inc., and the one hundred thousand ($100,000) dollars have been secured so that the sum shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon, Brown Shoe Company, Inc., shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated, (provided said payments shall not be called for until a certificate of the architect or person in charge of construction shall certify that materials or labor has been furnished of value equal to such payments asked for,) and it shall have the same completed in the earliest practicable time: it being understood that ten thousand ($10,000) dollars of the said one hundred thousand ($100,00) dollars shall be paid to Brown Shoe Company, Inc., when the contract or contracts for the building is or are signed by the contractors and the Company, and the remaining ninety thousand ($90,000) dollars shall be paid in installments of ten thousand ($10,000) dollars, as requested by Brown Shoe Company, Inc., to make payments for said buildings and the equipment thereof. It is further agreed that the total sum of one hundred thousand ($100,000) dollars shall be available for the purpose of making final payments for the factory and the equipment thereof within one hundred and twenty (120) days from the date of this contract.

EXHIBIT 9-1
SHEET 1

6th. It is understood between the parties hereto that Brown Shoe Company, Inc., shall in good faith continuously operate in the ordinary course of business, said factory to as large a capacity as conditions will permit. It is further understood that the main factory building shall be not less than 40 feet X 250 feet, three stories high. Also, that the amount paid out for labor shall be not less than one million two hundred fifty thousand ($1,250,000) dollars during the period of the first ten years, provided and adequate supply of labor is obtainable.

It is understood that said Brown Shoe Company, Inc., will carry insurance sufficient in amount to cover the cost of said building or buildings, and in the event of the total or partial destruction of the factory buildings by fire or other casualties the insurance money received by Brown Shoe Company, Inc., shall be employed in the reconstruction or repair thereof without unnecessary delay.

7th. Brown Shoe Company, Inc., shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years: but in the event Brown Shoe Company, Inc., shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Vincennes for any cause, Brown Shoe Company, Inc., shall in that event reconvey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interests may appear, the factory site and buildings and equipments free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

8th. We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

9th. If needed by you, we will furnish you rent free, for temporary use until the factory building is ready for occupancy, a room to be used for educating girls in stitching uppers, you to pay for cost of power, we to pay for bringing wiring to said room or building.

Fruit Growing District

Railroads—
C. & E. I. R. R.
B. & O. S. W. R. R.
M. & I. R. R.

On Midland Trail and Other Main Auto Roads

Served by Several Auto Bus and Truck Freight Lines

Fine Residential Districts

Two Active Building and Loan Associations

One Public Park

Fine Country Club With 9-Hole Golf Course

Two Movie Theatres

Four Grade Schools—One High School with Large Gym.

Many Fine Churches.

Up-to-Date Traffic Bureau

Several Prosperous Industries

AND WE WANT MORE

Active Chamber of Commerce At Your Service

WRITE US!

Dear Sir:

Answering your telegram of the 19th, the Salem Chamber of Commerce is now ready to enter into a contract with you along the lines discussed when in your office recently, with reference to the construction of an addition 40 x 100 feet, three stories high, on the west end of your present building here.

We have made a canvass of our business people and have the $25,000.00 asked fully subscribed.

At a meeting of the directors of our association this afternoon, I was authorized to offer you $25,000.00 for the erection of such addition, on the following terms:

$10,000.00	payable as the work progresses
5,000.00	May 1st, 1928
5,000.00	Nov. 1st, 1928
5,000.00	May 1st, 1929

The above terms of payment are not just as discussed with you, but we found it necessary, in getting subscriptions, to offer more liberal terms than on the former canvass. Should the payments come in quicker than contracted, we have no objection to paying them over to you.

We are ready to enter into formal agreement with you at any time it suits your convenience.

Yours very truly,

C. A. Potter

President.

Accepted:

Brown Shoe Company

By. E. [illegible] V. Pres.

October 24th, 1927

(12-A)

It gives me much pleasure to report that the campaign put on by our Chamber of Commerce to raise a fund of $ 25,000 as an inducement to your Company to build an addition to your Litchfield Plant, has been a complete success.

We therefore tender to you this sum, in consideration of a cancellation of the clauses in the old contract providing for a switch from the Big Four Railroad and for paving the street on the south side of your Plant, and further, in consideration of the erection of a new addition, 90 feet by 39 feet, 4 stories high, which, we understand, will increase your capacity approximately thirty per cent, and will mean an increase in the annual pay roll of the plant of around $150,000.

The Committee in taking subscriptions from the citizens, felt it wise to spread the payments over a six-months period, one-third of the amounts subscribed being payable on July 1st, October 1st and January 1st, respectively. As you may know, Litchfield has recently raised $300,000 for a new Water Works Plant, and as this was somewhat of a hardship on our people, the Committe thought that subscriptions to the Brown Shoe Company fund could be raised more easily if a little time were given to the subscribers. We therefore propose to make the payments to you as follows:

$ 8,500 on July 1st;
$ 8,500 on October 1st;
$ 8,000 on January 1st.

In the old contract, there was an agreement that we would see that city taxes be rebated for a period of ten years from the erection of the plant.

has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

8th. We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

9th. If needed by you, we will furnish you rent free, for temporary use until the factory building is ready for occupancy, a room to be used for educating girls in stitching uppers, you to pay for cost of power, we to pay for bringing wiring to said room or building.

Vincennes Chamber of Commerce

Vincennes, Indiana

B. F. Nesbitt President

Edgar N Hausman V P

IN DUPLICATE.

Brown Shoe Company, Inc., hereby accepts the foregoing proposition and agrees to be bound by the terms thereof.

December 15. 1925

BROWN SHOE COMPANY, INC.

Vice-President.

ATTEST:

Secretary.

EXHIBIT 9-1
SHEET 2

A G R E E M E N T.

WHEREAS, negotiations have been entered into between the Brown Shoe Company, a New York corporation, and the Board of Trustees of the Moberly Industrial Foundation, for and in behalf of the citizens of Moberly, Missouri, and other persons, subscribers to the Moberly Industrial Expansion Fund, and arrangements have been made for the establishment of an addition to the shoe factory of said company, now located in Moberly, Missouri;

NOW THEREFORE, it is agreed by and between the said company and said subscribers, represented by said Board, as follows:

For and in consideration of the sum of Seventy-Five Thousand Dollars ($75,000.00), to be paid to said company by said board for and in behalf of said subscribers, said company does hereby covenant and agree to build, establish and operate an addition to its shoe factory now located in Moberly, Missouri, situated on Carpenter Street in said City, which addition is to contain at least forty-thousand (40,000) square feet of floor space, same to be built and completed according to the plans submitted by said company to representatives of said board on the 5th day of July, 1927, the estimated cost to be approximately One Hundred Thousand Dollars ($100,000.00), and to be constructed at the expense of said company.

the employees employed therein and mentioned in this contract has reference to employees to be employed in said addition, same being in addition to the number now employed in the factory operated in Moberly, Missouri.

It is understood that a shut-down rendered necessary either by fire, war, or other casualties, or by causes over which Brown Shoe Company, Inc. has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

Said company agrees that it will begin the construction and erection of said addition upon the signing of this agreement and will proceed therewith with all convenience speed and complete same as soon as practicable, and will begin to operate said additional factory not later than six months from the date of this agreement and will operate same at as near full capacity as possible.

Should said company fail or refuse to carry out its part of this contract, then immediately upon such default and failure and refusal on its part, it shall pay back and return to said board the sum of said, to-wit, Seventy-five Thousand Dollars ($75,000.00)

porate seal to be hereunto affixed and said board has caused same to be signed by its members this 10 day of Dec. 1927.

BROWN SHOE COMPANY

ATTEST:

Secretary.

BY:

Vice President.

MOLLY INDUSTRIAL FOUNDATION

BY:

The undersigned, SULLIVAN COMMUNITY CLUB of Sullivan, Illinois, by its proper officers, hereby makes the following proposition and agreement, and which agreement is guaranteed by the signature of certain other citizens of the City of Sullivan, Illinois who signed both in behalf of themselves and other citizens of said City of Sullivan whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said City of Sullivan, Illinois, namely:

FIRST: Within ten days after the signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed, free and clear of all liens and incumbrances, a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

SECOND: We will supply the site so selected with the necessary water mains of our system to bring into the premises the necessary water for use in the factory for factory purposes, for adequate fire protection including sprinkler system

2.

87

We will construct and complete switch and sidetracks, suitable to Brown Shoe Company, in accordance with the requirements of its business, connecting the factory buildings with the Illinois Central Railroad, it being understood however, that the track outside of the grounds of the Brown Shoe Company may be used for team switch so as not to interfere in any manner with the business of the Brown Shoe Company.

THIRD: We agree to pay you or place at your disposal the sum of One Hundred Thousand Dollars ($100,000.00) in cash, to be used for the payment of suitable factory building or buildings and the equipment thereof including a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevator and the necessary machinery, etc., for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

FOURTH: We agree to pay all city, county and state taxes for a period of ten years from the opening of the factory.

FIFTH: We agree to furnish free of charge to you the necessary water for all purposes for a period of ten years from the opening of the factory.

SIXTH: Upon the acceptance of this proposition and when

3.

ave the same completed in the earliest practicable time; it
eing understood that Ten Thousand ($10,000.00) Dollars of the
id One Hundred Thousand ($100,000.00) Dollars shall be paid
o Brown Shoe Company, Inc., when the contract or contracts
or the building is or are signed by the contractors and the
Company, and the remaining Ninety Thousand ($90,000.00) Dollars
shall be paid in installments of Ten Thousand Dollars ($10,000.00)
the said installments to be paid at intervals of thirty days
from the date of signing of said contract, it being understood
that the plan of payment of said One Hundred Thousand ($100,000.00)
Dollars is as follows: Ten Thousand Dollars ($10,000.00) to
be paid as soon to the Brown Shoe Company upon the signing of
the contract for said building, and Ten Thousand Dollars ($10,000.00
each month thereafter for a period of nine months. ~~It is~~
~~especially provided however, that on any part of said One~~
~~Hundred Thousand ($100,000.00) Dollars not paid within ninety~~
~~(90) days from the date of signing of the contract for said~~
~~building, that we will allow to the Brown Shoe Company six per~~
~~cent interest from such date until fully paid, with full~~

board for and in behalf of said subscribers, said company does hereby covenant and agree to build, establish and operate an addition to its shoe factory now located in Moberly, Missouri, situated on Carpenter Street in said City, which addition is to contain at least forty-thousand (40,000) square feet of floor space, same to be built and completed according to the plans submitted by said company to representatives of said board on the 5th day of July, 1927, the estimated cost to be approximately One Hundred Thousand Dollars ($100,000.00), and to be constructed at the expense of said company. Said company agrees to use and occupy said addition for the purpose of manufacturing shoes and footwear, and to install efficient, proper and adequate machinery and equipment therein for property manufacturing shoes and footwear and to do and conduct therein a general shoe manufacturing business, affording, as nearly as possible, all year employment to those employed therein and agrees that it will operate and conduct said business in said addition for a period of ten (10) years from the beginning of the operation of said additional plant, and that it will pay out to its employees employed in said addition, in wages, the sum of at least Seven Hundred Fifty Thousand Dollars ($750,000.00) in the aggregate during said ten (10) year period; it being understood and agreed that the amount so paid shall be in addition to the amount normally paid in wages to its employees employed in its factory, now operated in Moberly, Missouri, and that

(1).

EXHIBIT "10-"
SHEET 1

Said company agrees that it will begin the construction and erection of said addition upon the signing of this agreement and will proceed therewith with all convenience speed and complete same as soon as practicable, and will begin to operate said additional factory not later than six months from the date of this agreement and will operate same at as near full capacity as possible.

Should said company fail or refuse to carry out its part of this contract, then immediately upon such default and failure and refusal on its part, it shall pay back and return to said board the sum so paid, to-wit, Seventy-Five Thousand Dollars ($75,000.00); and in case of the non-existence of said board, then to such trustees as the Circuit Court of Randolph County, Missouri, at Moberly, may appoint as successors, such successors to use said money for the purposes mentioned in the subscription agreement signed by said subscribers in said Industrial Expansion Campaign.

Said Seventy-Five Thousand Dollars ($75,000.00) shall be paid as follows:

Ten Thousand Dollars ($10,000.00) on the execution of this contract, and the balance in installments of Ten Thousand Dollars ($10,000.00), each to be paid as the building progresses, to be determined by the amount of labor and material which has been furnished in said building.

IN WITNESS WHEREOF, the said company has caused this agreement to be signed by its duly authorized officers and its cor-

MOVERLY INDUSTRIAL FOUNDATION

BY: _____

_____

_____

_____

_____

_____

Trustees.

EXHIBIT "10"
SHEET 3

to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said City of Sullivan, Illinois, namely:

FIRST: Within ten days after the signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed, free and clear of all liens and incumbrances, a suitable site, such as will be satisfactory to you, for the locating of the factory buildings to be erected by you.

SECOND: We will supply the site so selected with the necessary water mains of our system to bring into the premises the necessary water for use in the factory for factory purposes, for adequate fire protection including sprinkler system and for the needs of the employees employed therein.

We will also connect said premises with a proper drainage outlet for all practical purposes.

We will connect said premises with electric power and light wires.

We will construct and complete pavement and side walks in front of the factory site, unless pavement is already in at the site selected, so as to make the factory site accessible, it being understood that any pavement and side walks inside of the grounds to be turned to the Brown Shoe Company will be constructed by the Brown Shoe Company.

buildings and the equipment thereof including a good and sufficient fire extinguisher system, fire escapes, wiring, heating, plumbing, elevator and the necessary machinery, etc., for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

FOURTH: We agree to pay all city, county and state taxes for a period of ten years from the opening of the factory.

FIFTH: We agree to furnish free of charge to you the necessary water for all purposes for a period of ten years from the opening of the factory.

SIXTH: Upon the acceptance of this proposition and when the site has been selected and the deed to the property has been delivered to Brown Shoe Company, Inc., and the One Hundred Thousand ($100,000.00) Dollars have been secured so that the sum shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon, Brown Shoe Company, Inc., shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated, provided said payments shall not be called for until a certificate of the architect or person in charge of construction shall certify that materials or labor has been furnished of value equal to such payments asked for, and it shall

the said instalments to be paid at intervals of thirty days from the date of signing of said contract, it being understood that the plan of payment of said One Hundred Thousand ($100,000.00) Dollars is as follows: Ten Thousand Dollars ($10,000.00) to be paid as soon to the Brown Shoe Company upon the signing of the contract for said building, and Ten Thousand Dollars ($10,000.00) each month thereafter for a period of nine months. ~~It is especially provided however, that on any part of said One Hundred Thousand ($100,000.00) Dollars not paid within ninety (90) days from the date of signing of the contract for said building, then we will allow to the Brown Shoe Company six per cent interest from such date until fully paid, with full privilege however, to pay the same or any part thereof at any time before maturity.~~

SEVENTH: It is understood between the parties hereto that Brown Shoe Company, Inc., shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit. It is further understood that the main factory building shall be not less than 40 feet x 250 feet, with an extension 65 ft by 50 ft three stories high. Also, that the amount paid out for labor shall be not less than One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars during the period of the first ten years, provided an adequate supply of labor is obtainable.

EXHIBIT "11-B"
SHEET 4

4.

It is understood that said Brown Shoe Company, Inc., will carry insurance sufficient in amount to cover the cost of said building or buildings, and in the event of the total or partial destruction of the factory buildings by fire or other casualties the insurance money received by Brown Shoe Company, Inc., shall be employed in the reconstruction or repair thereof without unnecessary delay.

EIGHTH: Brown Shoe Company, Inc., shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years, but in the event Brown Shoe Company, Inc., shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Sullivan for any cause, Brown Shoe Company, Inc., shall in that event reconvey to the undersigned Sullivan Community Club or to such persons as may be designated to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interest may appear, the factory site and building free of all incumbrances.

5.

We, the undersigned, citizens of the City of Sullivan, Illinois, do hereby guarantee the performance of the above and foregoing contract in behalf of ourselves and others who have signed pledges to secure said funds.

John L Garner
Chester Stone
J. D. Thompson
Paul M Hankla
R. L. Foster
D. L. Butler
Jno. A. Little
L. E. Larrimore
Hayes & Williamson
Capitol Chevrolet Sales
Dee Cleaver
Webb Freeman
S. Federman
R. F. Gordon

D. L. Laughlin
Geo. A. Gentel
W. R. Pepinsky
E. A. McGuire
J. B. Baker
F. L. Lawson
Rufus Applegate
L. S. Thompson
E. Dennis Cook
L. K. Hagerman
G. W. Stevenson
W. K. Holzmueller
H. B. Fulton
Ed. Williamson

Pittsfield, Illinois
November 20, 1933

Brown Shoe Company, Inc.
St. Louis,
Missouri

Gentlemen:

The undersigned Pittsfield Development Association of Pittsfield, Pike County, Illinois a Corporation, by its proper officers and the undersigned citizens hereby make the following proposition for the purpose of inducing you to locate one of your factories for the manufacture of shoes in the said City of Pittsfield, namely:

1st. Within ten days after the signing of this agreement we will furnish and deed or cause to be deeded to you, by a good warranty deed, free of all liens and incumbrances the following property, the West one-half (½) of Block two (2) in original town of Pittsfield bounded as follows; beginning at the South East corner of North Madison and Perry Streets running East 160 feet along Perry Street thence South 340 feet, thence West 160 feet, thence North Along Madison Street 340 feet to the point of beginning, together with the factory building and equipment now located thereon, except the residence and out-buildings which are to be immediately removed. The property deeded to be used for Shoe Factory purposes only.

2d. We will provide, if desired, the right to use the alley for a siding to connect the Shoe Factory through the alley north to the Wabash Railroad.

3d. We will supply the site so selected with the necessary water mains to bring into the premises the city water for use in the factory for factory purposes and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

[illegible] it also granted, if desired, the right to use the alley for a siding to connect the Shoe Factory through the alley north to the Wabash Railroad.

3d. We will supply the site so selected with the necessary water mains to bring into the premises the city water for use in the factory for factory purposes and for the needs of the employees employed therein.

We will also connect said premises with the city sewers for all practicable purposes.

We will connect said premises with electric power wires.

We will have the streets both on the North and West of the Shoe Factory put into good condition as all weather roads.

4th. We will agree to pay you or place at your disposal the sum of Thirty-five Thousand Dollars ($35,000) to be used in the construction of a suitable factory building or buildings and the equipment thereof including a good and sufficient fire extinguisher system, wiring, heating, pumping and the necessary machinery, etc. for the manufacturing of shoes; said factory building or buildings to be erected on the site above described.

5th. Upon the acceptance of this proposition and when the deed to the property has been delivered to Brown Shoe Company, Inc., and the Thirty-five Thousand Dollars ($35,000) has been secured so that the sum shall be available for paying for the factory buildings and the equipment thereon as the work progresses thereon, Brown Shoe Company, Inc. shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated and shall have the same completed at the earliest practical time; it being understood that Ten Thousand Dollars ($10,000) of the said Thirty-five Thousand Dollars ($35,000) shall be paid to the Brown Shoe Company, Inc. on December 1, 1933, Ten Thousand Dollars ($10,000) on January 1, 1934, Five Thousand Dollars ($5,000) on February 1, 1934, Five Thousand Dollars ($5,000) on March 1, 1934, and Five Thousand Dollars ($5,000) on April 1, 1934.

6th. It is understood and agreed between the parties hereto that Brown Shoe Company, Inc. shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit. Also, that the amount paid out for labor shall be not less that Seven Hundred and Fifty Thousand Dollars ($750,000) during the period of the first ten years, provided an adequate supply of labor is secured.

It is understood and agreed that Brown Shoe Company, Inc. will carry insurance sufficient in amount to cover the cost of said building or buildings and equipment, and in the event of the total or partial destruction of the factory buildings by fire or other casualties the insurance money received by Brown Shoe Company, Inc. shall be employed in the

reconstruction or repair thereof without unnecessary delay.

7th. Brown Shoe Company, Inc. shall, if it accepts this proposition, operate said plant continuously so long as it is practical in the conduct of the business for, at least, a period of ten years; but in the event Brown Shoe Company, Inc. shall, within said period of ten(10) years, elect to discontinue the manufacture of shoes at Pittsfield for any cause, shall in that event convey to the undersigned Pittsfield Development Association, its successors or assigns, the factory site above described and buildings and equipment free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc. has not control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only as long as necessary.

8th. We pledge to you the loyal and hearty support of our Community represented by the Pittsfield Development Association and the Citizens of Pittsfield in making the factory a success.

Respectfully yours,
PITTSFIELD DEVELOPMENT ASSOCIATION.

G M Smith President Pittsfield Development Association

J. M. Thompson Secretary

Ed R. Quigley
G M Smith
Harry English
Wm. E. Daley
Louis
A E Kay

E E Kay
J M Ryan
J. M. Thompson
Thos Keane
Harry Keane

EXHIBIT "13-M"

cc Mr. H. E. Stevens, Pittsfield

November 21, 1938

Mr. R. L. Harp
Pittsfield
Illinois

Dear Mr. Harp:

Our Engineering Department has been working on plans for the addition at Pittsfield and Saturday and again today Mr. Branch of Pittsfield has been in conferring with Mr. Wolfe. We now have worked out on paper an addition eighty feet North and South by seventy-four feet. This compares with the sixty-three by sixty-three feet which we talked about tentatively when we were in Pittsfield Thursday. The addition will enable us to employ over fifty people in addition to the present force.

Mr. Branch estimates the cost of the bare building at about $10,000, which, with sprinkler system, heating and wiring added, will run the total cost up probably in excess of $17,000. My thought would be, therefore,

shall within said period of ten (10) years elect to discontinue the manufacture of shoes at Sullivan for any cause, Brown Shoe Company, Inc., shall in that event reconvey to the undersigned Sullivan Community Club or to such persons as may be designated to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interest may appear, the factory site and building free of all incumbrances.

But, it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only as long as necessary.

NINTH: We pledge you the hearty and loyal support of our ~~Business Association~~ Community Club and the citizens in making the factory a success.

IN WITNESS WHEREOF, the Sullivan Community Club has caused these presents to be executed by its President and attested by its Secretary.

ATTEST: _____
Secretary.

SULLIVAN COMMUNITY CLUB
BY E. C. Brandenburg
President.

Rec'd 9 2 9

H. L. Butler

Guy D. Little

L. G. Carmine

Hayes Williamson

Capitol Chevrolet Sales

Des Chapman

Webb Freeman

J. Anderson

P. K. Fowler

M. Patterson

F. E. Dawson

Ruben McDaniel

G. E. Thompson

E. Abernathy

L. K. Hagerman

G. W. Peterson

W. K. Holzmiller

B. E. Fulton

Ed. V. Hamilton

Hagerman

The Brown Shoe Company, Inc., hereby accepts the foregoing proposition and agrees to be bound by its terms thereof.

BROWN SHOE COMPANY, Inc.

BY _____
Vice-President.

ATTEST:

_____
Secretary.

Brown Shoe Company, Inc. hereby accepts the foregoing proposition and agrees to be bound by the terms, therof.

BROWN SHOE COMPANY, INC.

Vice President

ATTEST:

Secretary

EXHIBIT "12-L"
SHEET 2

with Mr. Bolte. We now have marked out on paper an addition eighty feet North and South by seventy-four feet. This compares with the sixty-three by sixty-three feet which we talked about tentatively when we were in Pittsfield Thursday. The addition will enable us to employ over fifty people in addition to the present force.

Mr. Branch estimates the cost of the bare building at about $10,000, which, with sprinkler system, heating and wiring added, will run the total cost up probably in excess of $17,000. My thought would be, therefore, that we enter into an agreement by which the citizens would agree to pay one-half of the total cost up to $12,000, that is, you to pay $6,000 and we to pay the balance if the total cost exceeds $12,000.

If this meets your ideas, I suggest that you draft a simple letter making this proposition to us, have it signed by a group of you, send it in in duplicate, and I will sign one copy in acceptance and return it to you.

We are going right ahead in order to take advantage of this weather, if possible. Mr. Branch hopes to break ground tomorrow morning.

Please remember me very cordially to Messrs. Clandon, English, Thompson and Kientzle, all of whom it was a pleasure to meet again together with you last week.

$6,000 paid in full March

Very truly yours,

EXHIBIT "14-T"
SHEET 1

Caruthersville, Mo., June 15, 1934

Brown Shoe Company, Inc.,
Saint Louis, Missouri

Gentlemen:

The undersigned citizens of the City of Caruthersville, Pemiscot County, State of Missouri, in behalf of themselves and other citizens of said City whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said City of Caruthersville, namely:

1st. Within ten days after signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed free and clear of all liens and incumbrances the agreed upon site and building erected thereon.

2nd. We will immediately proceed with the erection of an addition, on north side of present building, sixty (60) feet by two hundred-fifty (250), material and building to be the same kind as our present building, including heating and plumbing.

Ample sewerage is already connected to building.

3rd. The building is now connected with four inch water mains, but if necessary, we will change to six inch mains, for your water supply & sprinkling system.

The building is already equipped with electric power wires.

We will construct and complete a good gravel street to the front of factory building.

4th. The building is situated just outside the City limits, hence there is no City tax, and this building will not be taken into the [illegible] of this contract.

EXHIBIT "14-W"
SHEET 2

7th Brown Shoe Company, Inc., shall, if it accepts this proposition operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years; but in the event Brown Shoe Company, Inc., shall within said period of ten years elect to discontinue the manufacture of shoes at Caruthersville for any cause, Brown Shoe Company, Inc., shall in that event reconvey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interests may appear, the factory site and buildings and equipments free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant: but such shut-down shall continue only so long as necessary.

8th We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

SHOE FACTORY COMMITTEE

H. V. Litzelfelner

A. J. Dillman

W. B. Bernard

N. W. Helm

W. S. Vehi, Chairman

Charleston, Missouri.
May , 193?.

Brown Shoe Company, Inc.
Saint Louis,
Missouri.

Gentlemen:

The undersigned citizens of the City of Charleston, Mississippi County, State of Missouri, in behalf of themselves and other citizens of said city whom they represent, make you the following proposition to induce you to locate one of your factories for the manufacture of shoes and other things needful in the conduct of the business in said city of Charleston, namely:

1st. Within ten days after signing this agreement, we will furnish and deed to you absolutely by a good warranty deed free and clear of all liens and incumbrances the site selected.

2nd. We will have vacated the necessary streets and alleys.

3rd. We will supply the site with the necessary water mains to bring into the premises the city water for use in the factory for factory purposes and for the needs of the employees employed therein, water to be furnished you free for ten years.

We will also connect said premises with the city sewers.

We will connect said premises with electric power wires.

We will have paved or repaired the streets bounding the above factory site.

We will install or have installed by the railroad, the needed railroad siding to connect this site with the Missouri Pacific Railroad, all to be without any cost to you.

4th. We agree to raise and place at your disposal the sum of $60,000.00 in cash to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, wiring, heating, plumbing, and the necessary machinery, etc. for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc. has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only as long as necessary.

9th. We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

Charleston Commercial Club,
By Bim W. Stricker
President.

CHARLESTON JUNIOR CHAMBER OF COMMERCE.
By Carl Russell Lamar, President.

CHARLESTON KIWANIS CLUB,
By R. B. Patterson, President.

E. E. Oliver
Mayor of City of Charleston, Mo.

Herf Gurley Pres
A. H. Haydon
Rev. J. R. Fielding
Sydney Marshall
Frank Lay
Charleston Baking Co
E. Morley
J. W. Williams
C. L. Jones

H. G. Simpson
J. F. Bryant
Frank B. Graham
Max Friedman
L. D. Jackson
O. W. Caldwell
H. S. Foster
Organization
H. G. Brashear
Chas. H. Stanfill
H. A. Bruckmyer

[fol. 81] Exhibit "16-P"

R. A. Crawshaw, President R. D. Price, Vice-President
L. C. Pickler, Secretary F. D. Bohannon, Treasurer

Chamber of Commerce
Murphysboro, Ill.

Industry—Commerce—Agriculture
March 22nd, 1939.

Brown Shoe Company,
St. Louis, Missouri.

Gentlemen:

It has come to our attention that your company is contemplating the extension of its activities and the manufacture of some additional lines of shoes.

In view of the long and friendly relations your company has had with the people of Murphysboro, and the manner in which you have always kept faith with our people, we would respectfully suggest that you bring to this city the additional factory facilities needed. As a substantial inducement for you to do this, we would make you the following offer.

If you will construst here an addition of two stories to your present one story building, now forming the southeast wing of the present factory, providing additional floor space approximately 12,000 square feet, we hereby agree to undertake to raise a sum of $10,000.00 and turn this over to your company as evidence of the good will this community has toward you.

Payment of this amount will be made on the basis of $1,000.00 in cash when work on the structure is begun and the balance to be paid as rapidly as can be collected. This offer on our part is made on the understanding;

1. That the proposed addition will cost not less than $20,000.00.

2. That the average payroll of $400,000.00 yearly for the last five years, will be increased by 25 per cent yearly dur-

ing the next ten years, with a corresponding increase in the number of employees by 150.

These we understand were the figures you discussed orally with the committee. If this conforms with your understanding of our oral agreement reached at the meeting Monday in Murphysboro, will you kindly have it approved by the duly authorized officers of your company and return one copy of it to us, keeping the other for your files.

BROWN SHOE COMPANY
E. R. McCarthy, V-Pres.

MURPHYSBORO CHAMBER OF COMMERCE
R. A. Crawshaw, Pres.
L. C. Pickler, Sec'y.

[fol. 82]

Exhibit 17-Q

Brown Shoe Co., Inc.

Schedule of Cash Contributions

Showing Date of Receipt and Contract

Under Which Each Amount Was Received

	Date of Receipt	Amount Received	Total
Dixon, Illinois			
(No contract)			
	12-21-14	$10,000.00	$ 10,000.00
Charleston, Illinois			
Contract dated 4-14-19			
	5- 1-19	$ 10,000.00	
	5-24-19	10,000.00	
	6-13-19	10,000.00	
	6-20-19	10,000.00	
	8- 8-19	10,000.00	
	9-27-19	10,000.00	
	10- 4-19	10,000.00	
	11-14-19	10,000.00	
	12-26-19	8,000.00	
	2- 7-20	2,000.00	
	4-12-20	3,550.00	
	4-13-20	4,450.00	$ 98,000.00

Charleston, Illinois
Contract dated 10-28-24

12- 2-24	$ 10,000.00	
2- 3-25	10,000.00	
4-16-25	5,000.00	25,000.00

Mattoon, Illinois
Contract dated 12-14-21

10- 6-23	$ 1,836.66	
5- 7-24	1,800.00	
5-12-24	33.33	
4-10-25	1,836.66	
3-19-26	1,833.34	
2-24-27	1,833.33	
2-24-27	1,833.33	
2- 3-28	1,833.33	11,006.65

Mattoon, Illinois
Contract dated 3-7-28

3-26-28	$ 10,000.00	
5- 9-28	10,000.00	
6-13-28	30,000.00	
7-11-28	20,000.00	
8- 4-28	10,000.00	
9- 5-28	10,000.00	
10-15-28	10,000.00	
10-31-28	8,552.80	108,552.80

[fol. 83] Union City, Tennessee
Contract dated 11-29-22

12-14-22	$10,000.00	
1-17-23	10,000.00	
2-12-23	20,000.00	
3-13-23	5,000.00	
3-21-23	5,000.00	
4-20-23	5,000.00	
5-14-23	5,000.00	
7-12-23	5,000.00	
9- 8-23	5,000.00	
10-31-23	5,000.00	
11-24-23	5,000.00	
1-24-24	2,000.00	
5- 9-24	1,700.00	
6-27-24	14,300.00	$ 98,000.00

Salem, Illinois
Contract dated 1-3-25

1-21-25	$10,000.00	
3- 9-25	10,000.00	
3-24-25	10,000.00	
4- 8-25	10,000.00	
4-24-25	10,000.00	
5- 5-25	10,000.00	
5-22-25	10,000.00	
6- 5-25	10,000.00	
6-12-25	20,000.00	100,000.00

Salem, Illinois
Contract dated 10-24-27

11-28-27	$10,000.00	
5- 9-28	5,000.00	
11-16-28	5,000.00	
5- 6-29	5,000.00	25,000.00

Litchfield, Illinois
Contract dated 5-23-25

7- 2-25	$ 8,500.00	
10- 1-25	8,500.00	
1-29-26	8,000.00	25,000.00

Vincennes, Indiana
Contract dated 12-15-25

1- 8-26	$10,000.00	
2- 6-26	10,000.00	
2-13-26	10,000.00	
2-24-26	10,000.00	
3-12-26	10,000.00	
3-22-26	10,000.00	
4-15-26	10,000.00	
5-26-26	30,000.00	100,000.00

[fol. 84] Moberly, Missouri
Contract dated 6-1-27

7-27-27	$10,000.00	
8-22-27	10,000.00	
9-12-27	10,000.00	
10- 3-27	10,000.00	
10-17-27	10,000.00	
11-17-27	10,000.00	
11-22-27	14,000.00	$ 74,000.00

City of Carthagerville, namely:

1st. Within ten days after signing of this agreement, we will furnish and deed to you absolutely by a good warranty deed free and clear of all liens and incumbrances the agreed upon site and building erected thereon.

2nd. We will immediately proceed with the erection of an addition, on north side of present building, sixty (60) feet by two hundred-fifty (250), material and building to be the same kind as our present building, including heating and plumbing.

Ample sewerage is already connected to building.

3rd. The building is now connected with four inch water mains, but if necessary, we will change to six inch mains, for your water supply & sprinkling system.

The building is already equipped with electric power wires.

We will construct and complete a good gravel street to the front of factory building.

4th. The building is situated just outside the City limits, hence there is no City tax, and this building will not be taken into the City during the next ten years, the life of this contract.

We agree to pay all State and County taxes, real estate and personal for a period of ten years.

We agree to furnish free of cost your City water for a period of ten years.

5th Upon the acceptance of this proposition, and as soon as work has been started on the addition to the present building, Brown Shoe Company, Inc., shall proceed at once with the contracting for complete sprinkler equipment, under-ground and sprinkler tank and for complete machine equipment for use in this plant.

6th It is understood between the parties hereto that Brown Shoe Company, Inc., shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit, and that the amount paid out for labor shall not be less than seven hundred fifty thousand ($750,000.) dollars during the period of the first ten years, provided an adequate supply of labor is obtainable.

It is understood that said Brown Shoe Company, Inc., will carry insurance sufficient in amount to cover the cost of said building or buildings, and in the event of the total or partial destruction of the factory buildings by fire or other casualties the insurance money received from Brown Shoe Company, Inc., shall be employed in the re-construction or repair thereof without unnecessary delay.

factory site and buildings and equipments free of all incumbrances.

But it is distinctly understood that a shut-down rendered necessary either by fire, war or other casualties, or by causes over which Brown Shoe Company, Inc., has no control, such as panics, epidemics and labor or trade conditions, shall not be considered as a discontinuance of the plant; but such shut-down shall continue only so long as necessary.

5th We pledge you the hearty and loyal support of our Business Association and the citizens in making the factory a success.

SHOE FACTORY COMMITTEE

H. V. Litzelfelner

A. F. Dittman

W. B. Bernard

N. W. Helm

W. S. Wahl, Chairman

IN DUPLICATE

Brown Shoe Company, Inc., hereby accepts the foregoing proposition and agrees to be bound by the terms thereof.

BROWN SHOE COMPANY, INC.,

Vice-President

ATTEST

Secretary

We will install or have installed by the railroad, the needed railroad siding to connect this site with the Missouri Pacific Railroad, all to be without any cost to you.

4th. We agree to raise and place at your disposal the sum of $60,000.00 in cash to be used for the payment of suitable factory building or buildings and the equipment thereof including power and lighting plants, a good and sufficient fire extinguisher system, wiring, heating, plumbing, and the necessary machinery, etc. for the manufacture of shoes; said factory building or buildings to be erected upon the site selected.

5th. Upon the acceptance of this proposition and when the deed to the property has been delivered to Brown Shoe Company, Inc., and the $60,000.00 have been secured so that the sum shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon, Brown Shoe Company, Inc. shall proceed without delay to construct and complete the necessary factory buildings and to equip the same as herein contemplated, and it shall have the same completed at the earliest practicable time; it being understood that $10,000.00 shall be paid to Brown Shoe Company upon the awarding of the building contract and further payments of $10,000.00 as needed to pay for the building and appurtenances as the work progresses, it being understood that the final payment of $10,000.00 shall be made not later than the date the factory is officially opened.

6th. It is understood between the parties hereto the Brown Shoe Company, Inc. shall in good faith continuously operate in the ordinary course of business such factory to as large a capacity as conditions will permit. Also, that the amount paid out for labor shall be not less than Six Hundred Thousand dollars ($600,000.00) during the period of the first ten years, provided an adequate supply of labor is obtainable.

It is understood that said Brown Shoe Company, Inc. will carry insurance sufficient in amount to cover the cost of said building, and in the event of the total or partial destruction of the factory building by fire or other casualties the insurance money received by Brown Shoe Company, Inc. shall be employed in the reconstruction or repair thereof without unnecessary delay.

7th. Brown Shoe Company, Inc. shall, if it accepts this proposition, operate said plant continuously so long as it is practicable in the conduct of its business for at least a period of ten years; but in the event Brown Shoe Company, Inc. shall within said period of ten years elect to discontinue the manufacture of shoes at Charleston for any cause, Brown Shoe Company, Inc. shall in that event reconvey to the undersigned Citizens Committee, or their successors, to be held by them in trust for the citizens contributing to the fund for the establishment of said plant, as their interests may appear, the factory site and building free of all incumbrances.

EXHIBIT 15-O
SHEET 1

Thorsten Baker & Polk

E. Morley

J. W. Williams

C. L. Jones Jr.

L. Forsythe

E. Sylvester

R. B. Haggerty

Brewer & Tribby by B. B. Brewer

L. Class. Kalwing M. D.

W. R. Wells

H. S. Foster

Or assignee

H. G. Brasher

Chas. H. Stanfill

H. A. Bryson

Frost Cross

Cornwall

Geo A. Cox

R. L. Faulkner

W. R. Elson

Richard Dalton

Brown Shoe Company, Inc. hereby accepts the foregoing proposition and agrees to be bound by the terms thereof.

June 14 1937

BROWN SHOE COMPANY, INC.

Vice President

ATTEST:

Secretary

EXHIBIT 15-O
SHEET 2
107

Sullivan, Illinois			
Contract dated October 1929			
	11-14-29	$10,000.00	
	12- 3-29	10,000.00	
	1- 2-30	10,000.00	
	2- 3-30	10,000.00	
	3- 3-30	10,000.00	
	4- 2-30	10,000.00	
	5- 2-30	10,000.00	
	6- 3-30	10,000.00	
	7- 2-30	10,000.00	
	8- 2-30	5,000.00	
	9- 3 30	2,500.00	
	10- 7-30	1,000.00	
	11- 1-30	1,500.00	100,000.00
Pittsfield, Illinois			
Contract dated 11-20-33			
	12- 7-33	$10,000.00	
	1- 2-34	10,000.00	
	2- 2-34	5,000.00	
	3- 2-34	5,000.00	
	4- 3-34	5,000.00	35,000.00
Pittsfield, Illinois			
Agreement dated 11-21-38			
	3-28-39	$ 6,000.00	6,000.00
Charleston, Missouri			
Contract dated 6-14-37			
	7- 1-37	$10,000.00	
	9-30-37	10,000.00	
	9-30-37	10,000.00	
	10-31-37	20,000.00	
	11-27-37	10,000.00	60,000.00
Murphysboro, Illinois			
Contract dated 3-22-39	4-30-39	$ 1,000.00	
	5-31-39	3,000.00	
	6-30-39	4,000.00	
	7-31-39	2,000.00	10,000.00
Total amount contributed in cash			$885,559.45

[fol. 85]

Exhibit "18-R"

Brown Shoe Company, Inc.

Journal Entries Reflecting Receipt of Cash Contributed By Citizens of Sullivan, Illinois—$100,000.00

Cash Account		$100,000.00	
Factory Bonus Fund Account			$100,000.00
11-14-29	$10,000.00		
12- 3-29	10,000.00		
1- 2-30	10,000.00		
2- 3-30	10,000.00		
3- 3-30	10,000.00		
4- 2-30	10,000.00		
5- 2-30	10,000.00		
6- 3-30	10,000.00		
7- 2-30	10,000.00		
8- 2-30	5,000.00		
9- 3-30	2,500.00		
10- 7-30	1,000.00		
11- 1-30	1,500.00		

To record contributions of cash. This cash as received was deposited in the Company's general checking account.

Factory Bonus Fund Account		$100,000.00	
Surplus Account			$100,000.00
4-30-30	$60,000.00		
10-31-30	38,500.00		
4-30-31	1,500.00		
New Construction Account, Sullivan, Illinois		$150,151.95	
Accounts Payable			$150,151.95

Contractor's invoices

[fol. 86]

Accounts Payable		$150,151.95	
Cash Account			$150,151.95

Payment of contractor's invoices in accounting period ended 4-30-30. Checks were drawn on Company's general checking account.

Building Account	$150,151.95	
New Construction Account, Sullivan, Illinois		$150,151.95

To close out New Construction Account.

[fol. 87] Brown Shoe Company, Inc.

Journal Entries Reflecting Receipt of Building Contributed by Citizens of Caruthersville, Mo.

Building Account	$ 71,895.00	
Reserve for Depreciation Account		$ 6,675.37
Factory Bonus Fund Account		65,219.63

Entry of 10-31-34 to record contribution of building.

Factory Bonus Fund Account	$ 65,219.63	
Surplus Account		$ 65,219.63

Entry of 10-31-34 to close out Factory Bonus Fund Accounts.

In re: Brown Shoe Co., Inc.

Schedule of Amounts Contributed by Various Communities, Et

FISCAL YEAR ENDED OCT. 31	LOCATION CONTRIBUTIONS OF CASH	AMOUNT OF CONTRIBUTIONS	Cost of Properties Pursuant to Agreement LAND	BUILDING	MACHINERY	TOTAL	PERCENTAGE
	Dixon, Illinois	$ 10,000.00 (A)					
	Litchfield, Ill.	25,000.00 (A)					
	Charleston, Ill.	123,000.00 (A)					
1923	Union City, Tenn.	$ 98,000.00	$	$164,864.64	$59,409.39	$224,074.03	.437388
1925	Salem, Ill.	125,000.00		159,949.21	104,304.90	264,154.11	.473209
1927	Vincennes, Ind.	100,000.00		130,501.15	129,821.40	260,322.55	.384139
1928	Moberly, Mo.	74,000.00	4,000.00	194,269.68	194,130.95	392,400.63	.188583
1929	Matteson, Ill.	119,559.45		137,398.36	80,125.80	217,524.16	.549637
1931	Sullivan, Ill.	100,000.00		121,514.88	158,510.47	280,025.35	.357111
1934	Pittsfield, Ill.	41,000.00		57,476.64	67,975.00	125,451.64	.326819
1938	Charleston, Mo.	60,000.00		99,069.23	87,690.32	186,699.55	.32 3719
1939	Murphysboro, Ill.	10,000.00		32,164.43		32,164.43	.311182
		$727,559.45	$4,000.00	$1,096,848.22	$881,968.23	$1,982,816.45	
	CONTRIBUTIONS OF BUILDINGS						
1934	Pittsfield, Ill.	$ 20,251.93		$ 20,251.93	$ -0-	$ 20,251.93	
1935	Caruthersville, Mo.	65,219.63		117,426.50	-0-	117,426.50	
1943	Potosi, Mo.	57,953.70	$ 600.00	51,159.02	-0-		
	" " Heating			2,438.85			
	" " Plumbing			2,141.70			
	" " Lighting			1,414.13		57,953.70	
		$143,425.26	$ 600.00	$ 194,832.13		$196,632.13	
		$870,984.71	$4,600.00	$1,291,680.35	$881,968.23	$2178,448.58	
FULLY DEPRECIATED PRIOR TO OCT. 31 - 41 (A)		$158,000.00					
	TOTAL	$1,028,984.71					

NOTE:- Depreciation on donated properties has been disallowed as deductions from gross income for income tax purposes and also the amounts making up the donations have been excluded from invested capital in accordance with C.D. 1582 C.B. 1943, page 1019, Detroit Edison Co. v Com.

ted by Various Communities, Etc.

reement TOTAL	PERCENTAGE	Portion of Contribution Used to Acquire Land	Portion of Contribution Used to Acquire Buildings	Portion of Contribution Used to Acquire Machinery	TOTAL
$224,074.03	.437355		$72,017.00	$25,983.00	$98,000.00
264,164.11	.473209		75,542.00	49,358.00	125,000.00
280,322.58	.384139		50,130.58	49,869.42	100,000.00
392,400.63	.188583	$ 754.33	36,835.95	36,609.72	74,000.00
217,824.16	.549637		75,519.32	44,040.13	119,559.45
280,025.35	.357111		43,394.30	56,605.70	100,000.00
125,451.64	.326819		18,784.46	22,215.54	41,000.00
186,699.55	.32 3719		31,818.78	28,181.22	60,000.00
32,164.45	.311182		10,000.00		10,000.00
$1,982,816.45		$ 754.33	$415,942.39	$312,862.73	$727,559.45
$ 20,251.93			$20,251.93	$ -0-	$20,251.93
117,426.50			65,219.63	-0-	65,219.63
		$ 800.00	51,159.02	-0-	
			2,438.85		
			2,141.70		
57,953.70			1,414.13		57,953.70
$196,632.13			$142,625.26		$143,425.26
$2176,448.58		$ 1,554.33	$558,567.65	$312,862.73	$870,984.71

...e for income tax
...pital in accordance

In re: Brown Shoe Co., Inc. -47-

Depreciation on Portion of Net Amount of Contribution Used to Purchase Property.

LOCATION BUILDING	NET AMOUNT OF CONTRIBUTION	RATE	DEPRECIATION Oct. 31, 1942	Oct. 31, 1943
Union City, Tenn.	$ 72,017.00	3%	$2,160.51	$2,160.51
Salem, Ill.	75,642.00	3%	2,269.26	2,269.26
Vincennes, Ind.	50,130.88	3%	1,503.92	1,503.92
Moberly, Mo.	36,635.95	3%	1,099.08	1,099.08
Mattoon, Ill.	75,519.82	3%	2,265.58	2,265.58
Sullivan, Ill.	43,394.30	3%	1,301.83	1,301.83
Pittsfield, Ill.	39,036.39	3%	1,171.09	1,171.09
Caruthersville, Mo.	65,219.63	3%	1,956.59	1,956.59
Charleston, Mo.	31,818.78	3%	954.56	954.56
Murphysboro, Ill.	10,000.00	3%	300.00	300.00
Potosi, Mo. Bldg.	51,159.02	3%	-0-	1,534.77
" " Heating	2,438.85	5%	-0-	121.94
" " Plumbing	2,141.70	5%	-0-	107.09
Lighting	1,414.13	5%	-0-	70.70
Total			14,982.42	16,816.92
Machinery.				
Sullivan, Ill.	56,605.70	7%	3,962.40	3,962.40
Pittsfield, Ill.	22,215.54	7%	1,555.09	1,555.09
Charleston, Mo.	28,181.22	7%	1,972.69	1,972.69
Total			7,490.18	7,490.18

Recapitulation

	Oct. 31, 1942	Oct. 31, 1943
Portion of Depreciation claimed by Company on Buildings acquired with Contributed Funds	$14,982.42	16,816.92
Portion of Depreciation claimed by Company on Machinery acquired with Contributed funds	7,490.18	7,490.18
TOTAL	$22,472.60	$24,307.10

COST OF PROPERTIES ACQUIRED PURSUANT TO AGREEMENT

BROWN SHOE COMPANY, INC.

DETAIL OF DISTRIBUTION OF CASH CONTRIBUTIONS
PURSUANT TO PETITIONER'S ALTERNATIVE CONTENTION

FISCAL YEAR ENDED OCT 31	LOCATION	AMOUNT OF CONTRIBUTION	NUMBER OF EMPLOYEES TRAINED	COST OF TRAINING EMPLOYEES	NET AMOUNT OF CONTRIBUTION USED TO PURCHASE PROPERTY	LAND	BUILDINGS	MACHINERY	INVENTORY	TOT
	CONTRIBUTIONS OF CASH									
	Dixon, Illinois	$ 10,000.00*								
	Litchfield, Illinois	25,000.00*								
	Charleston, Illinois	125,000.00*								
1925	Union City, Tennessee	98,000.00	275	$ 27,500.00	$ 70,500.00	$	$164,644.64	$ 50,409.36	$ 99,024.69	$31
1926	Salem, Illinois	135,000.00	375	37,500.00	97,500.00		150,649.21	104,304.90	65,689.73	32
1927	Vincennes, Indiana	100,000.00	295	29,500.00	70,500.00		130,501.15	129,821.40	69,799.97	33
1928	Moberly, Missouri	74,000.00	215	21,500.00	52,500.00	4,000.00	104,269.68	104,130.96	309,236.38	60
1929	Mattoon, Illinois	119,559.45	315	31,500.00	88,059.45		137,398.14	80,125.80	44,651.01	26
1931	Sullivan, Illinois	100,000.00	295	29,500.00	70,500.00		121,514.88	158,510.47	80,659.59	30
1934	Pittsfield, Illinois	41,000.00	390	39,000.00	2,000.00		57,476.64	67,975.00	23,111.92	14
1938	Charleston, Missouri	80,000.00	210	21,000.00	59,000.00		99,009.83	97,690.38	9,583.81	19
1939	Murphysboro, Illinois	10,000.00	60	6,000.00	4,000.00		38,184.43	-0-	-0-	3
		$787,559.45	2,430	$343,000.00	$444,559.45	$4,000.00	$1,096,648.22	$881,968.25	$541,697.09	$2,52
	*Fully depreciated prior to Oct 31,1941	156,000.00								
	TOTAL	$943,559.45								

PROPERTIES ACQUIRED PURSUANT TO AGREEMENTS

DISTRIBUTION OF NET AMOUNT OF CONTRIBUTIONS

EXHIBIT "20-T"
SHEET 1

MACHINERY	INVENTORY	TOTAL	PERCENTAGE OF NET AMOUNT OF CONTRIBUTION TO TOTAL COST OF PROPERTIES ACQUIRED	PORTION OF CONTRIBUTION USED TO ACQUIRE LAND	PORTION OF CONTRIBUTION USED TO ACQUIRE BUILDINGS	PORTION OF CONTRIBUTION USED TO ACQUIRE MACHINERY	PORTION OF CONTRIBUTION USED TO ACQUIRE OPENING INVENTORY	TOTAL
$ 59,409.39	$ 99,024.69	$323,098.72	.2181998	$	$ 35,929.74	$ 12,963.09	$ 21,607.17	$ 70,500.00
104,304.90	65,689.73	329,843.84	.2658770		42,404.33	27,669.69	17,425.98	87,500.00
129,881.40	69,799.97	330,122.52	.2135870		27,869.43	27,724.27	14,906.30	70,500.00
194,130.96	209,236.35	601,636.96	.0872819	349.04	16,952.34	16,940.26	18,258.36	52,500.00
80,125.80	44,651.01	268,175.17	.335880		48,149.36	26,912.65	14,997.44	88,059.45
158,510.47	80,659.59	300,684.94	.2344650		28,490.98	37,165.15	4,843.87	70,500.00
87,975.00	23,111.98	148,583.56	.0154622		773.75	915.08	311.17	2,000.00
87,690.38	9,523.81	196,223.36	.1987830		19,678.38	17,428.91	1,892.71	39,000.00
-0-	-0-	32,164.45	-0-		4,000.00	-0-	-0-	4,000.00
$881,968.25	$541,697.09	$2,534,513.52		$349.04	$232,846.31	$167,719.10	$ 94,243.00	$484,559.45

BROWN SHOE COMPANY, INC.

EXHIBIT "BO-T"
SHEET 2

DEPRECIATION ON PORTION OF NET AMOUNT OF CASH CONTRIBUTION USED TO PURCHASE BUILDINGS AND MACHINERY

[illegible]

LOCATION	FISCAL YEAR 1942 BUILDING	MACHINERY	TOTAL	FISCAL YEAR 1943 BUILDING	MACHINERY	TOTAL
Union City, Tennessee	$1,077.89	$ -	$1,077.89	$1,077.89	$ -	$1,077.89
Salem, Illinois	1,272.13	-	1,272.13	1,272.13	-	1,272.13
Vincennes, Indiana	836.08	-	836.08	836.08	-	836.08
Moberly, Missouri	508.57	-	508.57	508.57	-	508.57
Mattoon, Illinois	1,384.48	-	1,384.48	1,384.48	-	1,384.48
Sullivan, Illinois	854.73	2,601.56	3,456.29	854.73	2,601.56	3,456.29
Pittsfield, Illinois	630.77	64.06	694.83	630.77	64.06	694.83
Caruthersville, Missouri	1,956.59	-0-	1,956.59	1,956.59	-0-	1,956.59
Charleston, Missouri	590.35	1,220.02	1,810.37	590.35	1,220.02	1,810.37
Murphysboro, Illinois	120.00	-0-	120.00	120.00	-0-	120.00
Potosi, Missouri	-0-	-0-	-0-	1,534.77	-0-	1,534.77
Do (Heating)	-0-	-0-	-0-	121.94	-0-	121.94
Do (Plumbing)	-0-	-0-	-0-	107.09	-0-	107.09
Do (Lighting)	-0-	-0-	-0-	70.70	-0-	70.70
	$9,231.59	$3,885.64	$13,117.23	$11,066.09	$3,885.64	$14,951.73

123

Exhibit 21-U

December 13, 1943 JAN 1944

Commissioner of Internal Revenue
Washington, D. C.

In re: Brown Shoe Company, Inc., St. Louis, Mo.
Fiscal year ended October 31, 1943--
Election to have unconstitutional tax
recovered during fiscal year 1943 taxed
in fiscal year 1933.

RECEIVED
JAN 1944
AUDIT REVIEW DIVISION D

Dear Sir:

During the fiscal year ended October 31, 1943, Brown Shoe Company, Inc. recovered the sum of $4,250.00 plus interest thereon representing a portion of the floor stock taxes paid by this Company on floor stocks at August 1, 1933. Such tax was paid during the fiscal year ended October 31, 1933 and was claimed as a deduction on the Company's return for that year.

Under the provisions of Section 128 of the Internal Revenue Code, the Company hereby elects to treat the said amount of $4,250.00 as not having been allowable for the fiscal year ended October 31, 1933, and consequently not includible in its taxable income for the fiscal year ended October 31, 1943.

The said amount of $4,250.00 plus interest was received by Brown Shoe Company on May 26, 1943.

Brown Shoe Company hereby consents to the inclusion of the said amount of $4,250.00 in its taxable income as otherwise computed for the fiscal year ended October 31, 1933 and consents to the assessment for the fiscal year ended October 31, 1933 of any deficiency together with interest thereon as provided by law, resulting from the addition to taxable income as otherwise computed for the said fiscal year of the amount of $4,250.00.

its taxable income for the fiscal year ended October 31, 1943.

The said amount of $4,250.00 plus interest was received by Brown Shoe Company on May 26, 1943.

Brown Shoe Company hereby consents to the inclusion of the said amount of $4,250.00 in its taxable income as otherwise computed for the fiscal year ended October 31, 1933 and consents to the assessment for the fiscal year ended October 31, 1933 of any deficiency together with interest thereon as provided by law, resulting from the addition to taxable income as otherwise computed for the said fiscal year of the amount of $4,250.00.

Computation of amended 1933 tax on income is presented in the schedule below.

Yours very truly,

BROWN SHOE COMPANY, INC.

COMPUTATION OF AMENDED 1933 TAX ON INCOME

Corrected net income as shown by stipulation agreement	$1,626,369.73
Add recovery of cotton floor stock taxes	4,250.00
Amended net income	$1,630,619.73
Tax on amended net income (@ 13-3/4%)	$ 224,210.21
Tax on corrected net income as shown by stipulation agreement	223,925.84
Additional tax	$ 284.37

49-C

[fol. 93] Official Report of Proceedings
Before
The Tax Court of the United States

(Filed October 16, 1947, The Tax Court of the United States)

Brown Shoe Co., Inc., Petitioner,
Docket No. 11394 vs.
Commissioner of Internal Revenue, Respondent.

[fol. 94] U. S. District Court Room No. 2,
Federal Building,
11th and Market Streets,
St. Louis, Mo.,
September 24, 1947—2:00 P. M.

(Met pursuant to notice.)

Before: Honorable J. Edgar Murdock, Judge
Appearances:

Chas. B. McInnis, Esq., Atty., Transportation Bldg., Washington, D. C., for the Petitioner.

George E. Gibson, Esq., 2155 Railway Exchange Bldg., Bureau of Internal Revenue, St. Louis, Mo., for the Respondent.

[fol. 95] Proceedings

The Clerk: Docket No. 11394, Brown Shoe Co., Inc.

Mr. McInnis: Charles B. McInnis, Transportation Building, Washington, D. C., for the Petitioner.

Mr. Gibson: George E. Gibson, Bureau of Internal Revenue, 2155 Railway Exchange Building, St. Louis, Mo., for the Respondent.

The Court: You may proceed.

Mr. McInnis: If your Honor please, before I make my opening statement I would like to file a motion to amend the petition in some slight respects so as to permit me to raise one alternative issue. Copy of the proposed amendment has been handed to counsel for Respondent, and I understand he has no objection.

Mr. Gibson: There is no objection to the motion, your Honor.

The Court: It may be filed.

Mr. Gibson: It requires no further pleadings on the part of the Respondent.

The Court: All right.

Opening Statement on Behalf of the Petitioner
By Mr. McInnis

Mr. McInnis: If your Honor please, this case involves the fiscal years ended October 31, 1942, and October 31, [fol. 96] 1943.

One of the original issues, accelerated depreciation, has been fully stipulated and is no longer in the case. That leaves three other principal issues. Two of those issues involve cash and property received from community groups.

For a number of years prior to the taxable years here involved, this petitioner had received from certain community groups cash and in two instances property as an inducement to locate and operate shoe factories within the particular communities. With one exception, such donations or gifts were made pursuant to written contracts, copies of which are in the stipulation.

In computing Petitioner's depreciation for fiscal years 1942 and 1943, Respondent eliminated what he considered to be the depreciation upon the assets acquired with the donated cash, and of course the depreciation in the entire amount of the two properties received as property. Petitioner challenges that, and contends in the first instance that this case is distinguishable from Detroit Edison in that here the community groups were in the business of making gifts, and they said they were making gifts to this taxpayer as we will try to develop from the contracts them- [fol. 97] selves. We attempt to distinguish Detroit Edison upon that ground, that the Supreme Court there said the donors were users in the rural communities and had no intention of making a gift, and cash or property were not gifts. Here we are endeavoring to show they were gifts.

We have the alternative issue under that point. We say if the depreciation on the portion of the property acquired

with donated cash is to be eliminated, then we question the Respondent's method of determining that depreciation. In the instances where the taxpayer received cash, the Respondent allocated that cash to buildings and machinery by taking the ratio of the total of the two to the total cost of the plant. In every instance, the amount donated was less than the cost of the plant. In that way, the Commissioner arrived at the amount of machinery he considered to have been acquired with donated cash, and the amount for buildings, and, working on that basis, eliminated the depreciation of the buildings and machinery.

We challenge that by contending if you are going to eliminate any depreciation it should be in smaller amounts. We contend that the purpose of the donation was to induce [fol. 98] the Petitioner to construct and operate a factory in the particular community, using local labor, which you will see from the contract was a consideration motivating the contributing groups.

We contend if you are going to allocate the cash at all, it should be allocated not only to buildings, to machinery and to land in one or two instances where land was purchased, but also the cost of training the new employees, which was the cost met by the Petitioner at the outset before it could start operating the plant. We contend the purpose of that donation was as much to reimburse the Petitioner for the cost of training new employees as it was for any other purpose. We have facts in the stipulation showing cost of training employees and the allegation on that basis if your Honor should concur that the taxpayer is right.

The next principal issue relates to invested capital, and turns on the same facts. The Respondent as eliminated from Petitioner's invested capital the amount of nine hundred and seventy-one odd thousand dollars, which is the total aggregate amount of the contributions plus the value of these two plants. His explanation in eliminating it from invested capital was that it was not contributed capital. [fol. 99] The Petitioner did not claim it in the first instance, and did not claim it in its primary issue as contributed capital. We claim it is accumulated earnings and profits.

The taxpayer brought it in, in the first instance, as part of the earnings surplus. We contend it constitutes part of

Moberly, Missouri	508.57	*	508.57	508.57	*	508.57
Mattoon, Illinois	1,384.48	*	1,384.48	1,384.48	*	1,384.48
Sullivan, Illinois	854.73	2,601.56	3,456.29	854.73	2,601.56	3,456.29
Pittsfield, Illinois	630.77	64.06	694.83	630.77	64.06	694.83
Caruthersville, Missouri	1,956.59	-0-	1,956.59	1,956.59	-0-	1,956.59
Charleston, Missouri	590.35	1,220.02	1,810.37	590.35	1,280.02	1,810.37
Murphysboro, Illinois	120.00	-0-	120.00	120.00	-0-	120.00
Potosi, Missouri	-0-	-0-	-0-	1,534.77	-0-	1,534.77
Do (Heating)	-0-	-0-	-0-	121.94	-0-	121.94
Do (Plumbing)	-0-	-0-	-0-	107.09	-0-	107.09
Do (Lighting)	-0-	-0-	-0-	70.70	-0-	70.70
	$9,231.59	$7,885.64	$13,117.23	$11,066.09	$3,885.64	$14,951.73

RECAPITULATION

	AMOUNT	
	Fiscal Year 1942	Fiscal Year 1943
Portion of depreciation claimed by Company on buildings acquired with contributed cash	$9,231.59	$11,066.09
Portion of depreciation claimed by Company on machinery acquired with contributed cash	3,885.64	3,885.64
Total depreciation claimed by Company on assets acquired with contributed cash	$13,117.23	$14,951.73

* Fully depreciated prior to October 31, 1941

Petitioner's accumulated earnings and profits. If it were to be distributed to Petitioner's stockholders it would be taxable in the hands of the stockholders under Section 115. Consequently, by definition and the Commissioner's regulations, it is made part of Petitioner's accumulated earnings and profits.

We contend in the alternative, if your Honor concludes it is not part of surplus earnings and profits, it is contributed capital. And we rely upon the three separate and distinct ideas as specified by Section 217(a) (12) as the purpose for which money and property may be paid in and included in invested capital. Your Honor will recall it is money paid in as capital, or money paid in as paid in surplus, or money or property paid as a contribution to capital. We recognize, in the alternative, all contributions to capital as meaning something other than paid in surplus. We think, paid in surplus would include all contributions made to the stock-
[fol. 100] holders themselves and would come in as capital stock or paid in surplus. Congress in using this test term "as a contribution to capital", must have intended the contributions made to someone other than the stockholders.

The third issue relates to the receipt by Petitioner in the fiscal year ended October 31, 1943, of the amount of $4,250.00, representing refund of tax which petitioner had paid and had deducted in its return for the fiscal year ended October 31, 1933. And we rely on Section 128 of the Code, which permits the taxpayer by filing an appropriate waiver and otherwise complying with the Commissioner's regulations to have that income subject to tax at the 1933 rate as part of its 1933 income. In effect, to have that portion of its deductions for 1933 disallowed.

In this case, this Petitioner had appealed to the Board of Tax Appeals for the fiscal year 1933. That case had been settled by stipulation, I believe, with the Board of Tax Appeals of that court. Being closed by the statute of limitations, it was closed by the final order of the Board of Tax Appeals.

In this issue we are squarely in conflict with the Commissioner's regulations, for those regulations specifically provide after a case has been appealed to the Board of
[fol. 101] Tax Appeals or Tax Court and settled by final

stipulation, the taxpayer may not have the benefit of the deductions. We think the regulation is contrary to the statute. Congress did not limit the relief to the taxpayer whose case had been closed by the statute of limitations but wasn't closed by the final stipulation of the Board of Tax Appeals or the court.

The facts are fully stipulated. After counsel for Respondent makes his statement, I would like to offer a stipulation of facts.

Mr. Gibson: I think Mr. McInnis has covered the issues, and I will waive any statement at this time.

Mr. McInnis: It is a joint stipulation, and it makes no difference who offers it.

The Court: The stipulation may be received.

Mr. Gibson: The Respondent has an objection to Paragraph 14 of the stipulation of facts. I wish to renew the objection for the record at this time.

The Court: I will rule on it now. The objection is overruled, and the exception noted. It may be received for what it may be worth. If it is immaterial, I will not have to pay attention to it.

Mr. McInnis: There is one other stipulation for the record we have agreed upon.

[fol. 102] Mr. Gibson: The stipulation is as follows: Petitioner had accumulated earnings and profits in excess of the amount of $971,031.01 at all times material to the issues in this case.

The Court: The record may show the parties are agreed on that as an official stipulation.

The case stands submitted upon this record.

Mr. Gibson: Yes, sir.

The Court: How do you want to file briefs?

Mr. McInnis: I would suggest this is the type of case that will lend itself to consecutive briefs, and that will be agreeable to me if it is to your Honor.

The Court: How long do you want?

Mr. McInnis: I think I can do it in thirty days. I note it is thirty days to October 24, which is all right, and I would suggest the following Monday, the 27th.

The Court: Does that make thirty-three days?

Mr. McInnis: Yes, I believe it does.

The Court: All right.

Mr. Gibson: May the Respondent have thirty days there-after?

The Court: That is all right, and fifteen days to reply. It is thirty-three days, thirty days and fifteen days.

[fol. 103] (Whereupon, at 2:15 o'clock P. M., September 24, 1947, the hearing was closed.)

[fol. 104] Petition of Commissioner of Internal Revenue for Review of Decision of The Tax Court of the United States and Statement of Points).

(Received and Filed July 28, The Tax Court of the United States).

In the United States Circuit Court of Appeals
Eighth Circuit

Commissioner Of Internal Revenue, Petitioner on Review,
No. 11394 vs. T. C. Docket
Brown Shoe Company, Inc., Respondent on Review.

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Now comes the Commissioner of Internal Revenue, by his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and respectfully shows:

I.

Jurisdiction

The petitioner on review is the duly appointed, qualified and acting Commissioner of Internal Revenue (hereinafter referred to as the Commissioner), holding his office by virutue of the laws of the United States.

The respondent on review, Brown Shoe Company, Inc. (hereinafter referred to as the taxpayer), is a corporation organized and existing under the laws of the State of New York having its principal office at 16th and Washington Streets, St. Louis, Missouri. The taxpayer filed its Federal excess-profits tax returns for the fiscal years ended October 31, 1942 and October 31, 1943, the taxable years here involved, with the Collector of Internal Revenue for the First District of Missouri, whose office is located at St. Louis, [fol. 105] Missouri, and within the judicial circuit of the United States Circuit Court of Appeals for the Eighth Circuit, where this review is sought.

The Commissioner files this petition pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

II

Prior Proceedings

The Commissioner determined deficiencies in respect of the taxpayer's Federal excess-profits tax liability for the fiscal years ended October 31, 1942 and October 31, 1943 in the respective amounts of $58,235.09 and $85,748.37. The taxpayer appealed to The Tax Court of the United States from the determination so made by the Commissioner and under date of February 13, 1948 the Tax Court promulgated its findings of fact and opinion, 10 T. C. No. 35, in accordance with which opinion the Court entered its decision on April 30, 1948 "that there are deficiencies in excess profits tax of $32,398.09 and $52,347.92 for the fiscal years ended October 31, 1942 and October 31, 1943, respectively."

III

Nature Of Controversy

Two issues were presented to the Tax Court for its consideration and determination, the first one of which issues had to do with the exclusion by the Commissioner from the taxpayer's equity invested capital of the sum of $971,031.01, representing money and buildings received from communities in which the taxpayer operated factories, and the second issue having to do with the disallowance by

the Commissioner of depreciation on buildings thus acquired by the taxpayer and on others built with the funds [fol. 106] thus acquired. The only issue decided contrary to the Commissioner's determination relates to that part of the second issue which involves depreciation on buildings and machinery acquired by the taxpayer with the cash received by it from the community groups, the decision of the Tax Court in respect of which issue forms the basis of the review herein sought.

During the period 1919 up to October 31, 1939 the taxpayer received cash in the amount of $885,559.45 and buildings worth $85,471.56 from various community groups in 12 different towns. The contributions so received by the taxpayer were received under contracts which varied somewhat in their provisions but each agreement generally required the taxpayer to acquire a factory in the town and to operate it for a specified period of time. If the conditions of the contract were fulfilled, the amount involved was to be refunded. In one case involving $10,000 there was no contract. The cash so received by the taxpayer was deposited in its general bank account and "was not earmarked for or held intact and applied against the cost of the factory, machinery, equipment or other items applicable to the plant acquired or constructed in the particular community." In his determination the Commissioner disallowed depreciation claimed by the taxpayer for each year on the buildings contributed by citizens of two communities and likewise disallowed "additional amounts which he determined to be the depreciation deductsd by Petitioner for the respective taxable years on buildings and machinery acquired with the cash received by Petitioner from thee community groups:" The Tax Court sustained the Commissioner's determination in disallowing depreciation on the two buildings contributed by citizens of two communities but refused to sustain his determination in disallowing depreciation on buildings, machinery and equip- [fol. 107] ment acquired by the taxpayer with the cash received by it from community groups. Accordingly the Tax Court reduced the deficiencies determined by the Commissioner to the amounts hereinabove indicated and entered its decision in accordance with its redetermination.

IV

Statement Of Points

Following is a concise statement of the points upon which the Commissioner intends to rely in the review herein, to-wit:

The Tax Court of the United States erred:

1. In entering its decision to the effect that there are deficiencies in excess-profits taxes for the fiscal years ended October 31, 1942 and October 31, 1943 in the respective amounts of only $32,398.09 and $52,347.92.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner except as modified by stipulation of the parties in respect of an issue not here involved.

3. In holding and deciding that the taxpayer is entitled to use as a part of its cost basis for depreciation on buildings built by it and machinery and equipment acquired by it the cash received by the taxpayer from community groups in the amount of, to-wit, $885,559.45.

4. In failing and refusing to hold and decide that the taxpayer is not entitled to use as a part of its cost basis for depreciation on buildings built by it and machinery and equipment acquired by it the cash received by the taxpayer from community groups in the amount of, to-wit, $885,559.45.

[fol. 108] 5. In that its opinion and its decision are not supported by but are contrary to the facts as stipulated by the parties.

6. In that its opinion and its decision are not supported by the evidence and are contrary to law.

Wherefor, the Commissioner petitions that the decision of The Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Eighth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that

appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

THERON L. CAUDLE
Assistant Attorney General
CHARLES OLIPHANT
Chief Counsel
Bureau of Internal Revenue
Attorneys for Petitioner on Review

[fol. 109] (Notice of Filing of Petition For Review by Commissioner of Internal Revenue and Acknowledgment of Service by Counsel For Respondent).

(Received July 28, 1948, and marked filed on July 28, 1948 and July 30, 1948, The Tax Court of the United States).

To:
Charles B. McInnis, Esquire
Transportation Building
Washington 6, D. C.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of July, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Eighth Circuit of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 28th day of July, 1948.

VICTOR S. MERSCH
Clerk, The Tax Court of the United States.

Service of copy of petition for review acknowledged this 29th day of July, 1948.

CHAS. B. McINNIS
Counsel for Respondent on Review.
Per Harold A. Kertz.

[fol. 110] (Notice of Filing of Petition For Review by Commissioner of Internal Revenue and Acknowledgement of Service by Respondent).

(Received and Filed August 3, 1948, The Tax Court of The United States).

To:
Brown Shoe Company, Inc.
1610 Washington Avenue
St. Louis, Missouri

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of July, 1948, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Eighth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 28th day of July, 1948.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review, is hereby acknowledged this 30th day of July, 1948.

BROWN SHOE COMPANY, INC.
By C. P. Evans, Secy.
Respondent on Review.

[fol. 111] (Petition of Brown Shoe Company, Inc., For Review of Decision of The Tax Court of The United States.

(Filed July 30, 1948, The Tax Court of The United States).

In The
United States Circuit Court of Appeals
For The Eighth Circuit.

Brown Shoe Company, Inc., Petitioner on Review
No. 11394 v. T. C. Docket
Commissioner Of Internal Revenue, Respondent on Review

To the Honorable Judges of the United States Circuit Court of Appeals of the Eighth Circuit:

Comes now petitioner, Brown Shoe Company, Inc., by its attorney, Charles B. McInnis, and respectfully shows that:

I.

Jurisdiction.

Petitioner, Brown Shoe Company, Inc., is a corporation duly organized and exisiting under the laws of the State [fol. 112] of New York, with its principal office at 16th and Washington Streets, St. Louis, Missouri. The returns for the fiscal years ended October 31, 1942, and October 31, 1943, the taxable periods here involved, were filed with the Collector of Internal Revenue for the First District of Missouri at St. Louis, Missouri, which is within the jurisdiction of the United States Court of Appeals for the Eighth Circuit.

This petition is filed pursuant to Sections 1141 and 1142 of the Internal Revenue Code, Title 26, U. S. C. A. 1141 and 1142, for a review of the decision of the Tax Court of the United States entered in the above-entitled cause on April 30, 1948.

II.

Prior Proceedings.

The Commissioner of Internal Revenue determined deficiencies in respect of petitioner's excess profits tax liability for the fiscal year ended October 31, 1942, in the amount of $58,235.09, and of excess profits tax for the fiscal year ended October 31, 1943, in the amount of $85,748.37. The petitioner filed with the Tax Court of the United States a petition for a redetermination of the proposed deficiencies. The matter was duly heard on the pleadings and on a stipulation of facts with exhibits attached thereto, on September 24, 1947. The Tax Court [fol. 113] of the United States promulgated its findings

of facts and its opinion on February 13, 1948, (10 T. C. No. 35), and entered its decision on April 30, 1948, ordering and deciding that there are deficiencies in excess profits tax of $32,398.09 and $52,347.92 for the fiscal years ended October 31, 1942 and October 31, 1943, respectively.

III.

Nature Of Controversy.

Two issues were presented to the Tax Court for its decision. The first issue had to do with the exclusion from petitioner's equity invested capital of the sum of $971,031.01, representing money and buildings received by petitioner from community groups in communities in which petitioner operated factories. The petitioner respectfully requests a review of the decision of the Tax Court in respect to that issue.

The second issue had to do with the disallowance by the Commissioner of a deduction for depreciation on (a) buildings thus acquired by the petitioner, and (b) buildings and equipment acquired, as the respondent alleged and the petitioner denied, with money received from community groups. On this issue the Tax Court decided that petitioner was not entitled to a deduction for depreciation on the buildings thus acquired, but was entitled to a deduction for depreciation on the other items. As to the second issue, petitioner respectfully requests a review of the decision of the Tax Court only in so far as it disallowed depreciation on the said buildings.

[fol. 114] The petitioner manufacturers shoes in a number of towns in the States of Missouri, Illinois, Indiana and Tennessee. During the period from 1919 up to October 1939, the petitioner received $885,559.45 in cash and $85,471.56 in buildings from various community groups in twelve different towns, the total amounting to $971,031.01. In all cases, except one involving $10,000 cash, there were contracts with the respective community groups. Those contracts varied, but generally they required the petitioner either to construct a new factory or to enlarge an existing facory in the particular community and to operate it for

an agreed period of time, the petitioner to employ a stipulated number of employees and to meet a specified payroll during a stipulated period of time. The amount involved was to be refunded if petitioner failed to comply with the terms of the contract. If it did comply with all the terms, petitioner was thereafter free to operate the factories in any way it desired or to dispose of the factories and to retain the proceeds without any obligation to account to the contributing group.

Certain of the cash payments received by petitioner from the community groups were credited directly to petitioner's Earned Surplus Account, while the other cash payments, when received, were credited to Contributed Surplus and subsequently transferred to its Earned Surplus Account. The value of the buildings was set up in a Buildings Account, carried as an asset, and credited to petitioner's Surplus Account.

[fol. 115] The cash when received was deposited in petitioner's general bank account and the cost of constructing the buildings and additions, and of the machinery, etc., was paid out of petitioner's general bank account. The cash received by petitioner from a particular community group "was not earmarked for or held intact and applied against the cost of the factory; machinery, equipment or other items applicable to the plant acquired or constructed in the particular community."

In computing its excess profits tax for the two fiscal years mentioned above, the petitioner included in its equity invested capital the aforementioned amount of $971,031.01 representing money and buildings received from community groups.

In determining the deficiencies for those two years, the Commissioner of Internal Revenue (a) reduced petitioner's equity invested capital by $971,031.01 representing the cash and value of the buildings received by petitioner prior to the first fiscal year involved herein; (b) disallowed the deduction for depreciation of the buildings which petitioner had received from the community group; and (c) disallowed "additional amounts which he determined to be the depreciation deducted by petitioner for the

respective taxable years on buildings and machinery acquired with the cash received by petitioner from the community groups."

The Tax Court of the United States sustained the Commissioner's determination (a) in reducing petitioner's equity invested capital by the amount of $971,031.01 and [fol. 116] (b) in disallowing depreciation on the buildings received from community groups but refused to sustain his determination (c) in disallowing depreciation on buildings and machinery which he determined, but petitioner denied, had been acquired with the cash received by petitioner from the community groups.

IV.

Points Relied Upon By Petitioner.

Petitioner is agrieved by the findings of fact and conclusions of law of the Tax Court of the United States, in so far as that tribual decided (a) that the amount of $971,031.01 was not includable in petitioner's equity invested capital, and (b) that the petitioner was not entitled to deduct, in computing its taxable income, depreciation on the buildings which it had received from the community groups and to which it held title.

The petitioner desires to obtain a review of the decision of the Tax Court of the United States by the United States Circuit Court for the Eighth Circuit and relies in the review herein on the following points:

The Tax Court of the United States erred:

1. In entering its decision to the effect that there are deficiencies in excess profits tax for the fiscal years ended October 31, 1942, and October 31, 1943, in the respective amounts of $32,398.09 and $52,347.92.

2. In failing and refusing to expunge the deficiencies in tax determined by the Commissioner.

[fol. 117] 3. In holding and deciding that the amount of $971,031.01, representing cash and property previously received from community groups is not includable in petitioner's equity invested capital as part of petitioner's

"accumulated earnings and profits" within the meaning of Section 718 (a) (4) of the Internal Revenue Code.

4. In holding and deciding that the said amount of $971,031.01 is not includable in petitioner's equity invested capital as money and property paid in as a "contribution to capital" within the meaning of Section 718 (a) (1) and (2) of the Internal Revenue Code.

5. In holding and deciding that the taxpayer was not entitled to a deduction for depreciation on the buildings which had been previously contributed directly to petitioner by certain community groups.

6. In that the opinion and decision of the Tax Court are not supported by, but are contrary to, the facts as stipulated by the parties.

7. In that its opinion and decision are not supported by the evidence and are contrary to law.

Wherefore, the petitioner respectfully requests that the decision of the Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Eighth Circuit, and that the errors complained of be reviewed and corrected by said Court.

CHARLES B. McINNIS
Attorney for Petitioner
Brown Shoe Company, Inc.

[fol. 118] District of Columbia: ss

Charles B. McInnis, being duly sworn, states that he is attorney of record for petitioner in the above-entitled case, that he has read the foregoing petition, and that the statements contained therein are true to the best of his knowledge, information and belief.

CHARLES B. McINNIS.

Subscribed and sworn to before me, a Notary Public this 30th day of July, 1948.

FLORENCE A. SMITH.
Notary Public.

My commission expires March 14, 1952.

[fol. 119] (Notice of filing of Petition for Review by Brown Shoe Company, Inc., and Acknowledgment of Service.)

(Filed July 30, 1948, The Tax Court of the United States.)

To: Charles Oliphant, Esquire
Bureau of Internal Revenue
Washington, D. C.

You are hereby notified that the petitioner, Brown Shoe Company, Inc., did, on the 30th day of July, 1948, file with the Clerk of the Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Eighth Circuit of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 30th day of July, 1948.

CHARLES B. McINNIS,
Attorney for Petitioner
Brown Shoe Company, Inc.

Service of copy of petition for review acknowledged this 30th day of July, 1948.

CHARLES OLIPHANT,
Counsel for Respondent
on Review.

[fol. 120] Joint Praecipé for Record.

(Received and Filed October 15, 1948, The Tax Court of the United States.)

In The United States Circuit Court Of Appeals For The Eighth Circuit.

Commissioner Of Internal Revenue,
Petitioner on Review,
No. 11,394. vs. T. C. Docket.
Brown Shoe Company, Inc.,
Respondent on Review.

Brown Shoe Company, Inc.,
Petitioner on Review,
No. 11,394. vs. T. C. Docket.
Commissioner Of Internal Revenue,
Respondent on Review.

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, copies duly certified as correct of the following documents and records in the above-entitled causes in connection with the petitions for review by the said Circuit Court of Appeals for the Eighth Circuit, heretofore filed by the taxpayer and the Commissioner of Internal Revenue:

1. Docket entries of the proceedings.
2. Pleadings:
   (a) Petition and answer
   (b) Amendment to petition and answer (Answer not of record).
3. Opinion of Tax Court
4. Decision entered April 30, 1948
5. Stipulation of Facts and Exhibits attached thereto.

[fol. 121] 6. Official Report of Proceedings held September 24, 1947, (including stipulation of parties on page 9).

7. Petition for review filed by the Commissioner Internal Revenue including statement of points to be relied upon, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

8. Petition for review filed by the taxpayer including statement of points to be relied upon, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

9. Orders enlarging time for the preparation, transmission and filing of the records on review.

10. This joint praecipe for record.

Said transcript to be prepared, certified and transmitted as required by the law and the rules of the United States Circuit Court of Appeals for the Eighth Circuit.

CHAS. B. McINNIS,
Attorney for Taxpayer.

THERON L. CAUDLE,
Assistant Attorney General.

CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue,
Counsel for Commissoner of Internal Revenue.

CRM/hhs 8/16/48

[fol. 122] (Clerk's Certificate to Transcript.)

The Tax Court Of The United States
Washington

Commissioner Of Internal Revenue, Petitioner,
Docket No. 11,394. vs.
Brown Shoe Company, Inc.,
Respondent.

Brown Shoe Company, Inc., Petitioner,
Commissioner Of Internal Revenue, Respondent.

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing pages 1 to 121, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

Seal
The Tax Court
of the U. S.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia this 21st day of October, 1948.

EMT

VICTOR S. MERSCH,
Clerk,
The Tax Court of the United States.

No. 13,851 Filed Oct. 27, 1948, E. E. Koch, Clerk.
No. 13,852 Filed Nov. 1, 1948, E. E. Koch, Clerk.

[fol. 123] (Order of The Tax Court of the United States extending time to file Record on Petitions for Review.)

The Tax Court Of The United States
Washington

Commissioner Of Internal Revenue,
Petitioner,
Docket No. 11,394. vs.
Brown Shoe Company, Inc., Respondent.

Brown Shoe Company, Inc., Petitioner,
Docket No. 11,394. vs.
Commissioner Of Internal Revenue,
Respondent.

Upon motion of counsel for the parties, it is

Ordered that the time for preparation, transmission and delivery of the record sur petitions for review of the above entitled proceedings in the United States Circuit Court of Appeals for the Eighth Circuit is extended to October 28, 1948.

JOHN W. KERN,
Acting Presiding Judge.

Dated: Washington, D. C.
August 19, 1948

evd

Now: October 21, 1948, the foregoing order is certified from the record as a true copy.

Seal
The Tax Court
of the U. S.

VICTOR S. MERSCH,
Clerk.

[fol. 145] And thereafter the following proceedings were had in said causes in the United States Court of Appeals for the Eighth Circuit, viz.:

(Appearance of Mr. Theron Lamar Caudle and Mr. Ellis N. Slack as Counsel for Petitioner in Cause No. 13,851.)

United States Court of Appeals

Eighth Circuit.

Commissioner of Internal Revenue, Petitioner,
No. 13,851. vs.
Brown Shoe Company, Inc.

The Clerk will enter my appearance as Counsel for the Petitioner.

THERON LAMAR CAUDLE,
Assistant Attorney General,

ELLIS N. SLACK,
Special Assistant to The Attorney General.

(Endorsed): Filed in U. S. Court of Appeals, Nov. 1, 1948.

(Appearance of Mr. Charles Oliphant and Mr. Charles E. Lowery as Counsel for Petitioner in Cause No. 13,851.)

The Clerk will enter my appearance as Counsel for the Petitioner.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

[fol. 146]

CHARLES E. LOWERY,
Special Attorney, Bureau of Internal Revenue.

(Endorsed): Filed in U. S. Court of Appeals, Nov. 10, 1948.

(Appearance of Counsel for Respondent in Cause No. 13,851.)

The Clerk will enter my appearance as Counsel for the Respondent.

CHARLES B. McINNIS,
Transportation Building,
Washington 6, D. C.

(Endorsed): Filed in U. S. Court of Appeals, Nov. 1, 1948.

(Appearance of Counsel for Petitioner in Cause No. 13,852.)

United States Court of Appeals

Eighth Circuit.

Brown Shoe Company, Inc., Petitioner,
No. 13,852. vs.
Commissioner of Internal Revenue.

The Clerk will enter my appearance as Counsel for the Petitioner.

CHARLES B. McINNIS,
Transportation Building,
Washington 6, D. C.

(Endorsed): Filed in U. S. Court of Appeals, Nov. 1, 1948.

[fol. 147] (Appearance of Mr. Theron Lamar Caudle and Mr. Ellis N. Slack as Counsel for Respondent in Cause No. 13,852.)

The Clerk will enter my appearance as Counsel for the Respondent.

THERON LAMAR CAUDLE,
Assistant Attorney General,

ELLIS N. SLACK,
Special Assistant to The Attorney General.

(Endorsed): Filed in U. S. Court of Appeals, Nov. 1, 1948.

(Appearance of Mr. Charles Oliphant and Mr. Charles E. Lowery as Counsel for Respondent in Cause No. 13,852.)

The Clerk will enter my appearance as Counsel for the Respondent.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue,

CHARLES E. LOWERY,
Special Attorney, Bureau of Internal Revenue.

(Endorsed): Filed in U. S. Court of Appeals, Nov. 10, 1948.

[fol. 148] (Appearance of Mr. Lee A. Jackson and Mr. Carlton Fox as Counsel for Commissioner of Internal Revenue in Causes Nos. 13,851 and 13,852.)

United States Court of Appeals
for the
Eighth Circuit.

Nos. 13,851 and 13,852.

Commissioner of Internal Revenue, Petitioner,
vs.
Brown Shoe Company, Inc.,
and
Brown Shoe Company, Inc., Petitioner,
vs.
Commissioner of Internal Revenue.

The Clerk will enter our appearance as Counsel for the Commissioner.

THERON LAMAR CAUDLE,
Assistant Attorney General,

ELLIS N. SLACK,

LEE A. JACKSON,

CARLTON FOX,
Special Assistants to The Attorney General.

(Endorsed): Filed in U. S. Court of Appeals, Mar. 7, 1949.

[fol. 149] (Order of Submission in Causes Nos. 13,851 and 13,852.)

March Term, 1949.

Thursday, March 10, 1949.

These causes, Nos. 13,851 and 13,852, having been called for hearing in their regular order, are argued together, and argument was commenced by Mr. Charles B. McInnis for Brown Shoe Company, Inc., continued by Mr. Carlton Fox, Special Assistant to The Attorney General; for Commissioner of Internal Revenue, and concluded by Mr. Charles B. McInnis for Brown Shoe Company, Inc.

Thereupon, these causes were submitted to the Court on the printed record and the briefs of counsel filed herein.

[fol. 150] (Opinion in Causes Nos. 13,851 and 13,852.)

United States Court of Appeals
For The Eighth Circuit.

No. 13,851.

Commissioner of Internal Revenue, Petitioner, vs. Brown Shoe Company, Inc., Respondent.	Petition to Review Decision of The Tax Court of the United States.

No. 13,852.

Brown Shoe Company, Inc.,
Petitioner,
vs.
Commissioner of Internal Revenue,
Respondent.

Petition to Review Decision of The Tax Court of the United States.

[June 17, 1949.]

Mr. Charles B. McInnis (Mr. Ernest M. Callomon and Messrs. Roberts & McInnis were with him on the brief), for Brown Shoe Company, Inc.

Mr. Carlton Fox, Special Assistant to the Attorney General (Mr. Theron Lamar Caudle, Assistant Attorney General, and Mr. Ellis N. Slack and Mr. Lee A. Jackson, Special Assistants to the Attorney General, were with him on the brief), for Commissioner of Internal Revenue.

Before GARDNER, Chief Judge, and WOODROUGH and THOMAS, Circuit Judges.

THOMAS, Circuit Judge, delivered the opinion of the Court.

Two petitions have been filed in this court to review a decision of the Tax Court of the United States entered April 30, 1948 (10 T.C. 291), involving excess profits taxes

of the Brown Shoe Company, Inc., for the fiscal years ended October 31, 1942, and 1943. The case was taken to the Tax Court on an appeal by the Shoe Company from the determination of deficiencies by the Commissioner. The issues were submitted to the Tax Court upon a Stipulation of Facts; and the parties have agreed that the petitions may be submitted here on a single record. It will be convenient, therefore, to consider both petitions in one opinion.

The Brown Shoe Company, Inc., is a New York corporation with its principal office at St. Louis, Missouri. It is engaged in manufacturing and selling shoes at several different plants in the states of Missouri, Illinois, Indiana, and Tennessee.

During the period from 1914 to October, 1939, the taxpayer received $885,559.45 in cash and two factory buildings of the aggregate agreed value of $85,471.56 from various community groups in 12 different towns, amounting in all to $971,031.01. In each of these cases, except one involving a donation of $10,000 cash, there was a contract between the taxpayer and the community group. Copies of all such contracts are attached to the Stipulation of Facts. Such contracts varied in some particulars, but generally they required the taxpayer to construct a new factory or to enlarge an existing one in the particular community, to operate it for an agreed period of time, usually 10 years, to employ a stipulated number of employees, and to meet a minimum stipulated pay roll during the period agreed upon.

Usually the contract provided that the cash donated was "to be used for the payment of suitable factory building or buildings and the equipment thereof" and that payment was to be made to the taxpayer "so that the same shall be available for paying for the factory buildings and the equipment thereof as the work progresses thereon."

The contracts further provided that in the event the taxpayer failed to comply with their terms the amount of the cash donation in each case should be refunded, and in the case of the two buildings title was to be transferred back to the donors. In case of compliance with the terms of the contracts, the taxpayer was thereafter free to operate the factories as it desired, or to dispose of the factories and retain the proceeds without obligation to account to the donors.

The cash received by the taxpayer from particular groups was not earmarked for or held intact and applied against the cost of the factory and equipment acquired or constructed in the particular community but was deposited by the taxpayer in its general bank account and debited to cash on the debit side of its ledger and credited to its earned surplus account or, in some cases, to contributed surplus and thereafter transferred to earned surplus.

In its appeal to the Tax Court the taxpayer complained of three acts of the Commissioner in determining deficiencies in its excess profits net income for the taxable years involved.

First, the Commissioner excluded from the taxpayer's claimed equity invested capital the sum of $971,031.01, representing cash and the value of buildings donated by the several community groups where it built new or enlarged existing factories.

Second, the Commissioner disallowed a deduction on account of depreciation claimed by the taxpayer on the two donated buildings valued at $85,471.56; and

Third, the Commissioner disallowed a claimed deduction for depreciation on factories and equipment to the extent of $885,559.45, which the Commissioner found represented property acquired with donated funds.

The Tax Court affirmed the first and second determinations of the Commissioner, and its decision in these respects is the basis of the complaint in the taxpayer's petition for review. The Tax Court reversed the Commissioner's third determination, supra, and its decision in this respect is the basis of the Commissioner's complaint.

We shall first consider the Commissioner's case. He contends that there is no evidence to support the Tax Court's finding and conclusion that ". . . no justification appears for the action of the Commissioner in disallowing depreciation on buildings, machinery and equipment upon the theory that the petitioner used cash received from the various communities to pay for those buildings and that machinery, and, consequently, the buildings and machinery had, to that extent, no cost to the petitioner. The parties have stipulated that the cash was not earmarked in any way and it is just as reasonable to assume that it was used for any one of a dozen other purposes as it is to make the Commissioner's assumption. The petitioner paid for the buildings and machinery out of its own unrestricted funds, those buildings and that machinery had cost to it, as shown on its books and records, and it is entitled to depreciation thereon."

The "Commissioner's assumption" and the facts referred to by the Tax Court are stated in paragraphs 9 and 11 of the Stipulation of Facts as follows:

"9 . . . The cash when received was deposited in Petitioner's general bank account and debited to Cash on the asset side of Petitioner's ledger. The cost of constructing the buildings and the additions, machinery, etc., was paid from Petitioner's general bank account, and debited to Cost of Buildings, Cost of Equipment, or Cost of Machinery, depending upon the nature of the particular expenditure, for the plant in question. The cash received by Petitioner from a particular community group was not earmarked for or held intact and applied against the cost of the factory, machinery, equipment, or other items appli-

cable to the plant acquired or constructed in the particular community, . . .

. . . . . .

"11. In every instance the cash received by Petitioner from the community groups . . . was less than the amount expended by Petitioner for the acquisition or construction of the factory building and the machinery of said factory. In determining the amount of depreciation to be disallowed for the fiscal years ended October 31, 1942, and October 31, 1943, attributable to the assets acquired with the contributed cash, Respondent first determined the total cost to Petitioner of the factory building, the land, in instances where land was purchased by Petitioner, and the machinery and he then allocated the cash contribution received by Petitioner from the citizens of the particular community to the cost of buildings, land, in instances where land was acquired, and machinery, in the ratio of the total cost of each of said items to the aggregate cost of all of said items for the particular factory . . ."

In considering the question thus presented by the Commissioner we have jurisdiction to review a decision of the Tax Court in the same manner and to the same extent as we have to review a decision of a district court in civil actions tried without a jury. 26 U.S.C.A. § 1141(a). Upon review there is thus made applicable to the decisions of the Tax Court Rule 52(a) of the Federal Rules of Civil procedure (28 U.S.C.A. following § 723c), wherein it is stated that "Findings of fact shall not be set aside unless clearly erroneous . . ." A finding of the Tax Court, however, is "clearly erroneous" when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States* v. *Gypsum Co.*, 333 U.S. 364, 395.

The question here is, "What is the basis for depreciation of the factory buildings and equipment involved?" The Tax Court correctly held that cost is the correct basis. 26 U.S.C.A. § 114. But "cost" means cost to the taxpayer.

Detroit Edison Co. v. *Commissioner*, 319 U.S. 98, 102. And cost to the taxpayer does not include contributions from others made for business or community interests. *Commissioner* v. *Arundel-Brooks Construction Corp.*, 4 Cir., 152 F.2d 225, 162 A.L.R. 1200; *C. L. Downey Co.* v. *Commissioner*, 8 Cir., 172 F.2d 810.

We think the Tax Court committed a clear mistake of law and fact when it concluded that the application of the donated funds to the cost of the factories and machinery depended upon the taxpayer's accounting system, and that upon that basis "it is just as reasonable to assume that it was used for any one of a dozen other purposes as it is to make the Commissioner's assumption." In the absence of proof to the contrary the only reasonable assumption is that the taxpayer faithfully performed its obligations under the contracts entered into with the community groups that contributed the funds in question. It could do that just as well by depositing those funds in and paying them out of its general bank account as it could by earmarking them in some manner and depositing them in a special account.

Further, the Tax Court's "assumption" in this regard is inconsistent with its further assumption stated in its opinion where it is declared that "It seems proper to assume that the petitioner [taxpayer] fulfilled all conditions attached to the transaction, since neither party suggests contrary." One of the conditions of these contracts was that the cash contributed was "to be used for the payment of suitable factory building or buildings and the equipment thereof . . .", and the taxpayer agreed to construct the building or buildings in accordance with the terms of the contract, obligating "itself to use [the sum donated] for the payment of the constructing of a suitable factory building or buildings and the equipment thereof . . ."

Of course, when the taxpayer deposited such donations in its general account in a bank it augmented its credit

balance proportionately, and when it drew checks against that balance to pay for the construction of a factory building the balance was reduced accordingly. Since the buildings and the equipment were all paid for in accordance with the contracts, neither the absence of earmarks on the deposit nor the entry of the transaction in the taxpayer's books supports an assumption that such funds were not applied in good faith to the purposes for which they were received. The decision of the Tax Court assailed by the Commissioner's petition to review must accordingly be and it is reversed.

We now turn to a consideration of the issues presented by the taxpayer's pefition.

Excess profit tax laws came into the internal revenue system of the United States as war measures. The first of such taxes was imposed by the 1917, 1918 and 1921 Act. It provided for levying "War Excess Profit Taxes" upon corporations, partnerships, and individuals. The question presented here arises under the 1940 Act, (54 Stat. 975, 26 U.S.C. § 710 et seq.), passed to tax abnormally high profits due to large governmental expenses for national defense. H.R. Rep. No. 2894, 76th Congress, 3d Sess., 1-2. The scheme of these laws, although differing in particular provisions is the same. In so far as material in this case under the 1940 Act controlling here, the amount of income subject to an excess profits tax is computed by subtracting from the net income subject to regular income tax an amount equal to 8 per centum of the taxpayer's (equity) invested capital for the taxable year. Pursuant to this scheme it is the taxpayer's right, and to its interest, to include in its invested capital account all assets legally includible therein and thus augment the 8 per centum deduction to which it is entitled under the law; while it is the duty of the Commissioner to exclude therefrom every item to which the taxpayer is not lawfully entitled.

The regular excess profits tax is imposed only upon the income remaining after deducting the 8 per centum of the taxpayer's invested capital. This 8 per centum of income was regarded by Congress as the taxpayer's normal and fair return upon its invested capital.

In the instant case the taxpayer's first contention is that the Commissioner and the Tax Court erred in respect of the amount of its equity invested capital. It argues that the amount of $971,031.01, representing cash and property received from community groups, is includible in its equity invested capital either as a "contribution to capital" within the meaning of § 718(a)(1) and (2) of the Internal Revenue Code or as part of its "accumulated earnings and profits" within the meaning of § 718(a)(4) of the Internal Revenue Code.

The statute (26 U.S.C., 1946 ed.) reads:

"§ 718. **Equity invested capital.**

"(a) **Definition.** The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

"(1) **Money paid in.** Money previously paid in for stock or as paid-in surplus, or as a contribution to capital;

"(2) **Property paid in.** Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid-in surplus, or as a contribution to capital . . .

* * * * * * *

"(4) **Earnings and profits at beginning of year.** The accumulated earnings and profits as of the beginning of such taxable year."

The taxpayer argues that in excluding from its capital structure the $971,031.01, and also in excluding the value of the two buildings received from the community groups, the Commissioner acted upon an erroneous conception of the meaning of "normal earnings" or a normal and fair return on the taxpayer's invested capital, in that he im-

puted to the meaning of those terms the same meaning which applied to them under the 1917 Act whereas they had an entirely different meaning under that Act from that in the Act of 1940. This difference, it is argued, is due to the difference between what may be included in "invested capital" under the two Acts.

The Supreme Court in *LaBelle Iron Works* v. *United States*, 256 U.S. 377, 388, a case arising under the 1917 Act, said: "The word 'invested' in itself imports a restrictive qualification. When speaking of the capital of a business corporation or partnership, such as the act deals with, 'to invest' imports a laying out of money, or of money's worth, either by an individual in acquiring an interest in the concern with a view to obtaining income or profit from the conduct of its business, or by the concern itself in acquiring something of permanent use in the business; . . ."

Under this definition of "invested capital" it is obvious the Commissioner did not err in excluding the money and buildings contributed to the taxpayer here from its invested capital account.

The argument is that that rule is not applicable under the 1940 Act. Our attention has not been called to any case, and we have found none, in which the Supreme Court has definitely stated what may be included by the taxpayer under all circumstances in its capital account under the 1940 Act. However, in the case of *Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496, the Court had under consideration the right of a taxpayer to include in its invested capital as "accumulated earnings and profits as of the beginning of such taxable year" the uncollected balances on installment sales made during the taxable year. In its discussion of the meaning of these words of the statute the Court said (P. 497): "It thus appears that by this method

Congress intended, with minor exceptions not here relevant, to impose the excess profits tax on all annual net income in excess of 8% of a corporation's working capital, including its accumulated profits." The Court concluded: "The respondent [taxpayer] can include in its equity invested capital only that portion of its profits from installment payments which it has actually received and on which it has already paid income taxes in the years of receipt."

This case, we think, whatever may be the proper conception of normal earnings under the 1940 Act, settles adversely to the taxpayer the contention that the amount of $971,031.01 representing the money and property received from community groups may be included in its invested capital under § 718(a)(4) as "accumulated earnings and profits as of the beginning of such taxable year" for the reason that it did not include any part of that amount in its income tax returns and pay income taxes thereon "in the years of receipt." Cf. *Frederick Smith Enterprise Co.* v. *Commissioner*, 6 Cir., 167 F.2d 356, 361.

It remains to determine whether the amount of $971,031.01 received as stated, supra, is includible in invested capital as "money previously paid in . . . as a contribution to capital" within the meaning of § 718(a)(1) and (2). The Tax Court, citing its own decision in *The McKay Products Corporation* v. *Commissioner*, 9 T.C. 1082, and other of its own decisions held it was not includible because "the transferors were not stockholders" of the taxpayer. This is consistent with the decision of the Supreme Court in the *LaBelle Iron Works* case, *supra*, decided under the 1917 Act.

At this point the taxpayer argues that the conception of capital and earnings of a corporation under the 1940 Act

differs from the conception thereof in the 1917 Act. To support this point it cites § 35.718-1 of Regulation 112 relating to the excess profits tax under the Internal Revenue Code, as amended for the taxable years beginning after December 31, 1941, reading in part:

"If the property was acquired after December 31, 1920, by a corporation from a shareholder as paid-in surplus, *or from any person as a contribution to capital*, then the basis shall be the same as it would be in the hands of the transferor if the transfer had not been made." (Emphasis supplied).

The taxpayer further calls attention to the statement in the Commissioner's brief wherein he says:

"Although the contributions here in question were undoubtedly contributions to the taxpayer's capital in the general sense of that term, so as to distinguish them from its income, they do not constitute 'a contribution to capital' within the meaning of that term as it is used in Section 718(a)(1) and (2) of the Internal Revenue Code . . ."

The regulation called to our attention is not helpful because it does not limit or define the meaning of the capital of a corporation as these words are used in the 1940 Act, and the quotation from the Commissioner's brief serves only to direct attention to the Commissioner's theory that the capital of a corporation, as that term is used in the statute, consists only of the capital as defined in its charter and paid in by the stockholders, and that there can be no "contributions to capital" unless a deficit exists therein, because unless such a deficit exists any contribution to the corporation is necessarily made to "paid-in surplus" within the meaning of § 718(a)(1) and (2), supra. Support for this theory of corporate accounting within the meaning of the revenue laws is found in *Detroit Edison Co.* v. *Com-*

missioner, 319 U.S. 98; *Willcuts* v. *Milton Dairy Co.*, 275 U.S. 215; *Edwards* v. *Douglas*, 269 U.S. 204; *Van Norman Co.* v. *Welch*, 1 Cir., 141 F.2d 99; *Foley Securities Corp.* v. *Commissioner*, 8 Cir., 106 F.2d 731; *Musical Instrument Sales Co.* v. *Anderson*, 2 Cir., 40 F.2d 454; and *McKay Products Corp.* v. *Commissioner*, 9 T.C. 1082. Until the Supreme Court has construed the 1940 Act otherwise we cannot say that the decision of the Tax Court in this regard is clearly erroneous.

Finally, the taxpayer contends that in computing its taxable income for the two fiscal years in question it is entitled to deduct depreciation on the two buildings received directly from the community groups to induce the taxpayer to locate a factory in the community, and that the Tax Court erred in holding otherwise. This identical point was presented to this court recently in the case of *C. L. Downey Co.* v. *Commissioner*, 8 Cir., 172 F.2d 810. We there held that a manufacturing company was not entitled in computing its income and excess profits tax to a deduction for depreciation on a factory building paid for with funds contributed by a community group to induce the taxpayer to locate its factory in their community, on the ground that under the statute, 26 U.S.C.A. § 114, depreciation is allowable only on the cost to the taxpayer of the property. We are unable to distinguish the facts in this case from the facts in that case. That decision is, therefore, binding here, requiring an affirmance of the Tax Court on this issue.

The result is that the decision of the Tax Court is reversed on the Commissioner's petition for review and affirmed on the taxpayer's petition, and the case is remanded to the Tax Court.

[fol. 163] (Judgment in Causes Nos. 13,851 and 13,852.)

United States Court of Appeals

for the

Eighth Circuit.

May Term, 1949.

Friday, June 17, 1949.

Commissioner of Internal Revenue, Petitioner,
No. 13,851. vs.
Brown Shoe Company, Inc.

Petition to Review Decision of The Tax Court of the United States.

and

Brown Shoe Company, Inc., Petitioner,
No. 13,852. vs.
Commissioner of Internal Revenue.

Petition to Review Decision of The Tax Court of the United States.

These causes came on to be heard on the petitions to review a decision of The Tax Court of the United States entered April 30, 1948, involving excess profits taxes of the Brown Shoe Company, Inc., for the fiscal years ended October 31, 1942, and 1943, and were argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the decision of the said Tax Court assailed by the petition to review filed by the Commissioner of Internal Revenue be, and is hereby, reversed, and upon the issues raised by the taxpayer Brown Shoe Company, Inc., the decision of the said Tax Court is hereby affirmed.

And it is further ordered by this Court that these mat-
[fol. 164] ters be, and they are hereby, remanded to the said Tax Court for proceedings consistent with the opinion of this Court this day filed herein.

June 17, 1949.

(Order enlarging time to and including August 2, 1949, in which to file petition of Brown Shoe Company, Inc. for rehearing, in Causes Nos. 13,851 and 13,852.)

May Term, 1949.

Friday, July 1, 1949.

On motion of counsel for the Brown Shoe Company, Inc., in the above cases, and for cause shown, and it appearing that counsel for the Commissioner of Internal Revenue has no objection to the motion, it is Ordered by the Court that the time for filing a petition for rehearing by the Brown Shoe Company herein be, and is hereby, enlarged to and including August 2, 1949.

July 1, 1949.

IN THE

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

Nos. 13,851 and 13,852

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

BROWN SHOE COMPANY, INC., RESPONDENT

BROWN SHOE COMPANY, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

On Petitions for Review of the Decision of the Tax Court of the United States

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TAXPAYER'S PETITION FOR REHEARING

Now comes the taxpayer, Brown Shoe Company, Inc., by its attorney, and respectfully petitions this honorable Court to set aside its opinion and grant a rehearing of this

cause upon the following grounds and for the following reasons:*

1. The Court inadvertently overlooked a material matter of fact in holding that the Tax Court committed a clear mistake of law and fact when it concluded that the application of the donated funds to the cost of the factories and machinery depended upon the taxpayer's accounting system, whereas the Tax Court's finding on this point was based upon a clear stipulation of fact.

2. The Court has inadvertently overlooked, and failed to pass upon, the alternative contention of the taxpayer, as set forth in its reply brief (pages 9 and following), that if this Court should set aside the findings of the Tax Court and determine that the contributions should be allocated to the cost of factories established or enlarged in the particular communities from which the contributions were received, then this Court should determine that such contributions should be allocated to all of the items which the taxpayer was required to provide in the particular factories, namely, the cost of land, buildings, machinery, opening inventories and the cost of training new employees, all of which were necessary for the establishment of a new factory or the enlargement of an existing factory.

3. The Court inadvertently overlooked material matters of law when it states (page 8 of the pamphlet opinion) that

> "The regular income tax is imposed only upon the income remaining after deducting the 8 per centum of the taxpayer's invested capital."

This statement is not correct with respect to the method of computing the taxpayer's regular income tax for the two

* The period within which to file a petition for a rehearing has been extended by the Court until August 2, 1949.

taxable years here involved, namely, the fiscal years ended October 31, 1942 and October 31, 1943. The regular corporation income tax was imposed for each of those two fiscal years on a separate and entirely different basis.

4. The Court inadvertently assumed that the decision of the United States Supreme Court in *Commissioner* v. *South Texas Lumber Co.*, 333 U. S. 496, held that any money or property received by a corporate taxpayer may not be included in its "accumulated earnings and profits" within the meaning of Section 718(a)(4) of the Internal Revenue Code, where no income taxes were paid on such money or property in the year of receipt, whereas the decision of the United States Supreme Court in that case merely upheld the validity of the Commissioner's regulations relating to the determination of accumulated earnings and profits of a taxpayer using the installment basis of reporting taxable income under section 44, I. R. C.

5. The Court inadvertently overlooked the fact that, in holding that property and money received by the taxpayer from community groups do not constitute contributions to capital within the meaning of section 718(a)(1) and (2) of the Internal Revenue Code because such contributions were not made by shareholders, and because "we cannot say that the decision of the Tax Court in this regard is clearly erroneous," it has impliedly invalidated excess profits tax Regulation 112, section 35.718-1 and income tax Regulation 111, section 29.113(a)(8)-1 both of which provide that a contribution to capital may be made "by any person."

Conclusion

For the reasons herein stated it is respectfully requested that this Court grant a rehearing for further consideration of the questions raised in this petition to the end that

judgment of this Court may, if the Court sees fit, be modified so as to provide for reversal of the decision of the Tax Court on the taxpayer's petition for review and for an affirmance of the Tax Court's decision on the Commissioner's petition for review, or, in the alternative, that the case be remanded with instructions to the Tax Court to allocate the cash contributions to all of the items covered by the contracts as contended for by the taxpayer in its alternative argument.

Respectfully submitted,

CHARLES B. MCINNIS,
Mayflower Office Building,
Washington 6, D. C.,
Attorney for the Taxpayer,
Brown Shoe Company, Inc.

ROBERTS & MCINNIS,
ERNEST M. CALLOMON,
Mayflower Office Building,
Washington 6, D. C.,
Of Counsel.

CHARLES B. MCINNIS, Counsel for Taxpayer, hereby certifies that this petition is believed to be well founded in law and fact, and is presented in good faith and is believed to be meritorious.

CHARLES B. MCINNIS,
Attorney for Brown Shoe Company, Inc.

* * * * * * *

(Endorsed:) Filed in U. S. Court of Appeals, Aug. 1, 1949.

[fol. 169] (Order denying Petition of Brown Shoe Company, Inc., for Rehearing in Causes Nos. 13,851 and 13,852.)

May Term, 1949.

Monday, August 8, 1949.

The petition for a rehearing filed by the Brown Shoe Company, Inc., in these causes has been considered by the Court, and it is now here Ordered that same be, and it is hereby, denied.

August 8, 1949.

[fol. 170] (Clerk's Certificate.)

United States Court of Appeals

Eighth Circuit.

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the record on petitions to review the decision of The Tax Court of the United States, as prepared and printed under the rules of the United States Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Court of Appeals for the Eighth Circuit, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Court of Appeals wherein Commissioner of Internal Revenue was Petitioner and Brown Shoe Company, Inc., was Respondent, No. 13,851, and Brown Shoe Company, Inc., was Petitioner and Commissioner of Internal Revenue was Respondent, No. 13,852, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the 22nd day of August, A. D. 1949, a mandate was issued out of said Court of Appeals in said causes, directed to The Tax Court of the United States.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 17th day of October, A. D. 1949.

E. E. KOCH,
Clerk of the United States Court of Appeals for the Eighth Circuit.

(Seal)

[fol. 171] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. 445

ORDER ALLOWING CERTIORARI—Filed January 9, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration or decision of this application.